

United States
Circuit Court of Appeals

For the Ninth Circuit.

KURT H. KOEHLER and WILLIAM L. BREWSTER, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and KURT H. KOEHLER in his individual capacity,

Appellants,

vs

M. C. CLARK, Attorney General of the U. S.

~~THE BANK OF CALIFORNIA~~, THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, and THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a national banking association,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

United States
Circuit Court of Appeals

For the Ninth Circuit.

KURT H. KOEHLER and WILLIAM L. BREWSTER, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and KURT H. KOEHLER in his individual capacity,

Appellants,

vs.

JAMES E. MARKHAM, as Alien Property Custodian, THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, and THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a national banking association,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer	63
Answer of Defendant, The United States National Bank of Portland (Oregon).....	66
Answer (The Bank of California).....	69
Appeal:	
Certificate of Clerk to Transcript on.....	87
Designation of Contents of Record on	81
Notice of	79
Statement of Points and Designation of Record on	110
Statement of Points (D. C.) Upon Which Appellants Will Rely on	83
Certificate of Clerk.....	87
Complaint	2
Exhibit A—Last Will and Testament of Bertha Koehler	13
B—Codicil to Last Will and Testament of Bertha Koehler.....	17
C—Order Approving Final Account and Authorizing Distribution	19
D—Order as to Distribution to the Trustees	22

INDEX

PAGE

Complaint—(Continued):

E—Assets Distributed to Trustees as of 7/31/44.....	24
F—Assets Delivered to Bank of California National Associa- tion, in Blocked Account.....	25
G—Copy of License No. S. F. 43790	25
H—Report on Form APC-3.....	29
I—Transactions of Trustees.....	43
J—Vesting Order Number 4780...	45
K—Letter to Plaintiffs dated April 19, 1945	48
L—Notice of Claim Arising as a Result of Vesting Order.....	49
Defendant's Motion to Dismiss	61
Defendant's Motion for Judgment on the Plead- ings	71
Designation of Contents of Record on Appeal...	81
Designation of Contents of Record on Appeal to Be Printed	112
Docket Entries.....	85
Findings of Fact and Conclusions of Law.....	73
Conclusions of Law.....	77
Judgment Order	78
Memorandum of Decision.....	73

INDEX	PAGE
Names and Addresses of Attorneys.....	1
Notice of Appeal to Circuit Court of Appeals...	79
Statement of Points (D. C.) Upon Which Appellants Will Rely on Appeal.....	83
Statement of Points (C. C. A.) Upon Which Appellants Will Rely on Appeal.....	110
Stipulation for Order Amending Defendant's Answer	72
Transcript of Proceedings.....	90
Proceedings of Trial.....	90
Witnesses, Plaintiff's:	
Brewster, William L.	
—direct	94
—cross	96
—redirect	99
—recross	100
Koehler, Kurt H.	
—direct	92

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

WM. L. BREWSTER,
604 Mead Bldg.,

HART SPENCER, McCULLOCH
& ROCKWOOD,

FLETCHER ROCKWOOD,
1410 Yeon Bldg., Portland, Oregon,
For Appellants.

JOHN F. SONNETT,
Asst. Atty. General,

HARRY LEROY JONES,
ALBERT PARKER,

Special Assts. to Atty. General,

IRVING JAFFE,
Atty. Alien Property Section, Claims Division,
Dept. of Justice, Washington, D. C.,

HENRY L. HESS, U. S. Atty. and

V. E. HARR, Asst. U. S. Atty.,

Portland, Oregon,
For Appellees.

PLATT, HENDERSON, WARNER, CRAM
& DICKINSON,

HAROLD J. WARNER,
115 Porter Bldg.,

KOERNER, YOUNG, SWETT & McCOLLOCH,
R. R. MORRIS,

800 Pacific Bldg., Portland, Oregon,
For Appellees.

DISTRICT COURT

District Court of the United States
for the District of Oregon

Civil Action File No. 2924

KURT H. KOEHLER and WILLIAM L. BREWSTER, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and KURT H. KOEHLER in his individual capacity,

Plaintiffs,

vs.

JAMES E. MARKHAM, as Alien Property Custodian, THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, and THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a national banking association,

Defendants.

COMPLAINT

I.

Plaintiffs are natural-born citizens of the United States and reside in Portland, Multnomah County, Oregon, and neither of them has been or is now an enemy or an ally of an enemy of the United States. This action arises under the "Trading with the Enemy Act" of October 6, 1917, as amended (40 Stat. 411; U. S. C. A., Title 50, Appendix), and particularly under Section 9 thereof, as hereinafter more fully appears.

II.

Defendant James E. Markham is the duly appointed, qualified and acting Alien Property Custodian and exercises the authority vested in the Alien Property Custodian by Executive Order No. 9095, dated March 11, 1942 (7 Federal Register 1971), as amended by Executive Order No. 9193, dated [1*] July 6, 1942 (7 Federal Register 5205). Defendant The Bank of California, National Association, is a national banking association with place of business in Portland, Oregon. Defendant The United States National Bank of Portland (Oregon) is a national banking association with principal place of business in Portland, Oregon.

III.

Bertha Koehler, herein called the decedent, a citizen of the United States, died on November 20, 1943, a resident of Portland. Multnomah County, Oregon. Decedent left a last will and testament dated February 14, 1933, and a codicil thereto dated July 11, 1933. On November 29, 1943, said will and codicil were duly admitted to probate by the Circuit Court of the State of Oregon for Multnomah County, In Probate, and plaintiffs were thereupon appointed and thereafter qualified as executors thereof. A true and correct copy of said will is hereto attached, marked Exhibit A, and by this reference made a part hereof. A true and correct copy of said codicil is hereto attached,

* Page numbering appearing at foot of page of original certified Transcript of Record.

marked Exhibit B, and by this reference made a part hereof. Plaintiffs have not been discharged as executors and are now the duly appointed, qualified and acting executors of said will and codicil.

IV.

On June 6, 1944, plaintiffs filed in said Circuit Court their final account as executors and on July 18, 1944, said Circuit Court made its order approving said final account and authorizing distribution of said estate by plaintiffs as executors. A true and correct copy of said order dated July 18, 1944, is hereto attached, marked Exhibit C, and by this reference made a part hereof. [2]

V.

On August 29, 1944, plaintiffs, as executors, filed their petition in said Circuit Court reciting that distribution to themselves as trustees of the trust created by paragraph Third of the will and the codicil thereto should be made to themselves as trustees to be held in a blocked account in accordance with Executive Order No. 8389, and General License No. 30 A. On August 29, 1944, said Circuit Court made an order in response to said petition. A true and correct copy of said order dated August 29, 1944, is hereto attached, marked Exhibit D, and by this reference made a part hereof.

VI.

Pursuant to said order of distribution dated July 18, 1944, and said order dated August 29, 1944,

plaintiffs, as executors, distributed said estate to the devisees and legatees thereto entitled under the terms of the will and codicil, and in particular delivered to themselves, as trustees of the trust created by paragraph Third of the will, as modified by said codicil, one half of the residue of said estate. Subject to the qualifications stated in paragraph IX hereof relating to the stock of defendant The United States National Bank of Portland (Oregon), the assets distributed by plaintiffs as executors to themselves as such trustees are described in the schedule hereto attached, marked Exhibit E, and by this reference made a part hereof.

VII.

On September 27 and 29, 1944, plaintiffs, as such trustees and in accordance with said order dated August 29, 1944, of said Circuit Court, deposited with defendant The Bank of California, National Association, in a blocked account, personal [3] property constituting assets of said trust created by said paragraph Third of the last will and testament of the decedent and the codicil thereto. A description of assets so deposited with the defendant The Bank of California, National Association, is contained in the schedule hereto attached, marked Exhibit F, and by this reference made a part hereof. Thereupon the Federal Reserve Bank of San Francisco issued to plaintiffs as such trustees a license, No. SF43790, dated October 18, 1944, to carry on certain transactions with respect to said blocked account. A true and correct copy of said license No. SF43790 is here-

to attached, marked Exhibit G, and by this reference made a part hereof.

VIII.

On or about September 22, 1944, said executors and trustees filed in the office of the Alien Property Custodian a report on Form APC-3, a true copy of which (except for the omission of the said will and codicil which appear herein as Exhibits A and B) is hereto attached, marked Exhibit H, and by this reference made a part hereof.

IX.

The assets of the estate of the decedent distributable by plaintiffs, as executors, to legatees included 475 shares of the capital stock of the defendant The United States National Bank of Portland (Oregon). At the time of the making by said Circuit Court of the order of distribution dated July 18, 1944, said capital stock was registered in the stock record books of said defendant The United States National Bank of Portland (Oregon) in the name of said decedent. Plaintiffs have requested said defendant to transfer 237 shares to plaintiffs as such trustees, but said defendant has refused to transfer said shares in compliance [4] with said request. Plaintiffs are informed and believe, and upon such information and belief allege, that said defendant declined and still refuses to transfer said shares in compliance with said request in the belief of said defendant that it is forbidden so to do by reason of the terms of the Trading with the Enemy Act.

X.

Ilse Schloesser, the person named in paragraph Third of said will and in said codicil, was the daughter of the decedent and at the time of decedent's death was a resident of Germany. Plaintiffs last had information relating to Ilse Schloesser as of the month of May, 1945, and at that time plaintiffs were informed that she was still living and was still a resident of Germany.

XI.

As of the month of May, 1945, the last date as of which plaintiffs had information relating to Ilse Schloesser and her family, plaintiffs were informed that Ilse Schloesser was then married to Kurt Schloesser, who was then living and was a resident of Germany, and that children of Ilse Schloesser, including Maida D. Grottian, a daughter by a former marriage, and Elizabeth Schloesser, a daughter by her present husband, and Peter Grottian, son of Maida D. Grottian, were then living and were residents of Germany.

XII.

A true and correct statement of all of the transactions by plaintiffs as trustees since the date of receipt by them as trustees from themselves, as executors, of the assets of decedent's estate is contained in the schedule hereto attached, marked Exhibit I, and by this reference made a part hereof. [5]

XIII.

On March 30, 1945, defendant James E. Markham, acting as Alien Property Custodian, made his vesting order No. 4780 dated March 30, 1945. A true and correct copy of said vesting order No. 4780 is hereto attached, marked Exhibit J, and by this reference made a part hereof.

XIV.

As of the opening of business on April 23, 1945, the Federal Reserve Bank of San Francisco, acting as Fiscal Agent of the United States, by letter to plaintiffs dated April 19, 1945, revoked said License No. SF43790 and authorized plaintiffs, so far as Executive Order No. 8389 is concerned, to engage in any transaction which might be engaged in of no national of any blocked country had any interest in the property involved. A true and correct copy of said letter dated April 19, 1945, is hereto attached, marked Exhibit K, and by this reference made a part hereof.

XV.

Plaintiffs have requested defendant The Bank of California, National Association, to deliver to them assets of said trust so held in said blocked account, but said defendant has refused to do so. Plaintiffs are informed and believe, and upon such information and belief allege, that said defendants refused and still refuses to deliver said property to plaintiffs in the belief of said defendant that it is forbidden so to do by reason of the terms of the Trading with the Enemy Act.

XVI.

On October 1, 1945, plaintiffs filed with defendant James E. Markhem, as Alien Property Custodian, a notice of their claim under oath relating to the property described in said vesting [6] order No. 4780 upon the form prescribed by the Alien Property Custodian and containing the particulars as required by said Custodian. A true and correct copy of said notice of claim (complete except that copies of the will and codicil of decedent, included herein as Exhibits A and B, are not included therein) is hereto attached, marked Exhibit L, and by this reference made a part hereof.

XVII.

Plaintiff Kurt H. Koehler is the son of the decedent, Bertha Koehler. If plaintiff Kurt H. Koehler survives his sister, Ilse Schloesser, and the husband and all children and all lineal descendants of his sister, and if Ilse Schloesser survives her husband and all of her lineal descendants, and if Ilse Schloesser has died or shall die intestate, plaintiff Kurt H. Koehler will be the person entitled under the statutes of the State of Oregon to take and receive all property of said trust; and plaintiff Kurt H. Koehler is consequently a contingent beneficiary of said trust and under the circumstances recited will be entitled to all of the principal and income of said trust.

Wherefore, plaintiffs demand judgment as follows:

1. That the right and title of the plaintiffs as trustees of the trust created by paragraph Third of the will of Bertha Koehler, deceased, and the codicil thereto, be established.

2. That vesting order No. 4780 be declared to be erroneous and to vest or purport to vest in the Alien Property Custodian rights greater than those to which he is entitled under the Trading with the Enemy Act in the following respects:

(a) No "heirs" or "distributees" of Ilse Schloesser have [7] any vested rights under the terms of said trust and the rights of all beneficiaries thereunder are contingent and under certain contingencies all of the income and principal of said trust will be distributable to a citizen or citizens of the United States, residents therein, with the consequence that the Alien Property Custodian has no right to vest himself the right, title and interest of the "heirs and distributees" of Ilse Schloesser;

(b) Neither Ilse Schloesser nor any person claiming under her has any right to demand of plaintiffs as executors or as trustees any payment or delivery of any principal or income of said trust, with the consequence that the Alien Property Custodian has no right to vest in himself "the right to demand from the executors of said estate and from the trustees under said will, payment and delivery of the principal and income" of said trust;

(c) The property described in said vesting order is not "payable to deliverable" to Ilsa Schloesser or to any other national of any enemy country;

(d) The property described in said vesting order is not “owned or controlled” by Ilse Schloesser or by any national of any enemy country;

3. That plaintiffs as trustees and their successors in trust are entitled to the possession of all of the corpus of said trust and of income derived therefrom; and are entitled to administer said trust, to invest and reinvest the principal thereof, to collect all rents and all other income therefrom, to pay all expenses of administration thereof, including taxes and all other expenses of operating and maintaining said trust property and reasonable fees of plaintiffs for services as trustees and fees of counsel retained by plaintiffs for services [8] incidental to the administration of said trust, and to hold and accumulate income from said trust and invest said income in income-bearing property pending determination of the fact of who shall be entitled to the ultimate distribution of principal and income; that plaintiffs’ rights to hold and administer said property are and shall be limited only to the extent that they shall be restrained, until it is determined otherwise by this court or by any other competent and authorized governmental authority, from distributing directly or indirectly any principal or income of said trust to Ilse Schloesser, or to any person claiming through Ilse Schloesser who is now or is at the time of such proposed distribution an enemy alien as defined in the Trading with the Enemy Act or any other applicable statute or law of the United States.

4. That defendant Alien Property Custodian be restrained and enjoined from taking any action which will interfere with the free exercise by plaintiffs of their rights as stated in paragraph 3 of these prayers.

5. That defendant The Bank of California, National Association, be authorized and directed to deliver to plaintiffs on their demand all property constituting assets of said trust held by said defendant under any circumstances and particularly held by said defendant in said blocked account.

6. That defendant The United States National Bank of Portland (Oregon) be authorized and directed to transfer to plaintiffs, as trustees of said trust, said 237 shares of the capital stock of said defendant now standing on its books in the name of said decedent.

7. That in the meantime defendants be restrained and enjoined from proceeding to take any steps relating to said trust or any [9] of the assets thereof adverse to the claims and interests of the plaintiffs until the rights and interests of plaintiffs therein may be settled and determined and established.

WILLIAM L. BREWSTER
FLETCHER ROCKWOOD
HART, SPENCER, McCULLOCH &
ROCKWOOD,
Attorneys for Plaintiffs.

[Endorsed]: Filed Oct. 9, 1945. [10]

EXHIBIT A

I, Bertha Koehler, of Portland, Oregon, revoking all other wills made by me, do make, publish and declare this, my last will and testament:

First: I direct that all my property be divided by my executors into two equal parts.

Second: One of such equal parts I give, devise and bequeath to my son Kurt K. Koehler, of Portland, Oregon, if he survives me; but if he dies in my lifetime leaving a will, I direct that my executors pay over such equal part to the executors or trustees of his will for distribution to the persons and upon the terms designated therein; and if he dies intestate in my lifetime, then I give such part to his heirs and distributees in the proportions provided by the present statutes of the State of Oregon governing descent and distribution of real and personal property in cases of intestacy.

Third: The other of such equal parts I give to Kurt H. Koehler and William L. Brewster, of Portland, Oregon, not for themselves but in Trust for the following uses and purposes:

(a) My trustees shall have full power to hold said trust fund and to sell, convert, exchange, lease, mortgage, improve, invest and re-invest the same, and generally in all respects manage, handle, and dispose of each and every part of said trust fund in such securities, properties, or investments either of the character permitted by law for investment of trust funds or otherwise and in such manner and upon such terms as to them may seem best.

(b) The trustees are vested with sole discretion and power to determine what shall constitute principal of the trust fund and what shall constitute gross income therefrom or of net income available for payment under the terms of this trust.

(c) Each beneficiary under this trust is hereby restrained from and shall be without power and authority to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate, or in any other manner affect or impair her or their beneficial and legal rights, titles, interests, claims, and estates in and to the income or principal of this trust during the entire term hereof, nor shall the rights, titles, interests, and estates of any beneficiary hereunder be subject to the rights or claims of creditors of any beneficiary nor liable to any process of law or court, and all of the income or principal under this trust when it becomes payable direct to the beneficiaries under the terms hereof shall be transferable, payable, and deliverable solely and personally to said beneficiaries at the time entitled to take the same under the terms of this trust or to the duly appointed guardian of any beneficiary.

(d) Upon the request of any beneficiary, the trustees shall render quarterly a statement of account under this trust to such beneficiary.

(e) If either of the trustees resigns, dies, or otherwise is unable to act as trustee, the remaining trustee shall [11] appoint a successor trustee, subject, however, to the approval of my daughter Ilse Schloesser, and said successor trustee when so

appointed shall have the powers and duties of the trustee appointed by myself, including the right to appoint a successor trustee.

(f) Upon the final distribution the trustees may distribute all or any of my property in kind or may convert some or all of it into cash for payment of the net proceeds to the persons entitled thereto.

(g) My trustees shall hold the trust fund for the benefit of my daughter, Ilse Schloesser, of Alberfeld, Germany, but without her right to receive either income or principal of the trust fund for a period of twenty (20) years after my death, unless in that period the said Ilse Schloesser becomes a resident of the United States, or, if a resident of a foreign country, comes in person to Portland, Oregon, or sends thereto her duly authorized attorney in fact, and notifies the trustees in writing that she demands payment and delivery of this trust fund, and thereupon and promptly my trustees shall pay and deliver to her personally or to such attorney in fact the entire property in said trust fund, both principal and income; provided, however, my trustees may in their joint and uncontrolled discretion and only when they deem it safe and expedient and to the best interest of said Ilse Schloesser pay over to her during said period of twenty (20) years such amounts principal or income as they think best. Not later than twenty (20) years after my death my trustees shall pay and deliver any undistributed portion of the trust fund to said Ilse Schloesser, if living. If my said daughter does not survive me or if she dies before

final distribution of the trust fund, I direct that my trustees shall pay over the trust fund to the executors or trustees of her will for distribution to the persons and upon the terms designated therein; but if she dies intestate either during my lifetime or after my death and before final distribution, my trustees shall deliver and pay over said trust fund to her heirs and distributees and in the proportions provided by the present statutes of the State of Oregon governing the descent and distribution of real and personal property in cases of intestacy.

Fourth: I appoint Kurt H. Koehler and William L. Brewster executors of this my last will and testament, and I direct that no bond or undertaking be required of them as executors or trustees hereunder.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal this 14th day of February, 1933.

[Seal] /s/ BERTHA KOEHLER

The foregoing instrument was by Bertha Koehler, the testatrix therein named, signed and sealed and by her declared to be her last will and testament in the presence of us, the undersigned, who at her request and in her presence and in the presence of each other have hereunto subscribed our names as witnesses.

ETHEL C. GRAHAM

Residing at Portland, Oregon.

C. W. KING

Residing at Portland, Oregon.

EXHIBIT B

Know All Men by These Presents, that I, Bertha Koehler, a resident and citizen of Portland, Oregon, in the United States of America, but at present visiting in Germany, do make, publish, and declare this to be a codicil to my last will and testament dated on the 14th day of February, 1933.

I hereby revoke subdivision (g) of paragraph Third of said will, and in substitution thereof I make the following provision:

(g). My trustees shall hold the trust fund for the benefit of my daughter, Ilse Schloesser, of Elberfeld, Germany, but without her right to receive either income or principal of the trust fund for a period of twenty (20) years after my death, unless in that period the said Ilse Schloesser becomes a resident of the United States, or, if a resident of a foreign country, comes in person to Portland, Oregon, or sends thereto her duly authorized attorney in fact, and notifies the trustees in writing that she demands payment and delivery of this trust fund, and thereupon and promptly my trustees shall pay and deliver to her personally or to such attorney in fact the entire property in said trust fund, both principal and income; provided, however, my trustees may in their joint and uncontrolled discretion and only when they deem it safe and expedient and to the best interest of said Ilse Schloesser pay over to her during said period of twenty (20) years such amounts principal or income as they think best. Not later than twenty (20) years after my death

my trustees shall pay and deliver any undistributed portion of the trust fund to said Ilse Schloesser, if living. If my said daughter does not survive me or if she dies before final distribution of the trust fund, I direct that my trustees shall pay over the trust fund to the executors or trustees of her will for distribution to the persons and upon the terms designated therein; but if she dies intestate either during my lifetime or after my death and before final distribution, my trustees shall deliver and pay over said trust fund to her heirs and distributees and in the proportions provided by the present statutes of the State of Oregon governing the descent and distribution of real and personal property in cases of intestacy, provided, however, that payment and delivery of the trust fund to those persons entitled to take under the will of Ilse Schloesser or under the statutes of the State of Oregon shall be made by the trustees only upon the same terms and conditions as to each of said persons that payment and delivery may be made to Ilse Schloesser as in this paragraph Third subdivision (g) is above stated, including discretionary payments by my trustees.

I hereby ratify and confirm my said will in every other respect.

In Witness Whereof, I have hereunto set my hand and seal this 11th day of July, 1933.

[Seal] /s/ BERTHA KOEHLER

Signed, sealed, published, and declared by the testatrix Bertha Koehler as and for a codicil to

her last will and testament in our presence, and we in her presence and in the presence of each other have hereunto at her request signed our names as attesting witnesses the day and year last above written.

/s/ PAUL KAUFMAN

Residing at Wuppertal, Elberfeld,
11 Juli 1933.

/s/ CARL SCHNEIDER

Residing at Wuppertal, Elberfeld,
11 Juli 1933.

EXHIBIT C

In the Circuit Court of the State of Oregon for
the County of Multnomah, Department of
Probate

No. 51211

In the Matter of the Estate of
BERTHA, KOEHLER,

Deceased.

ORDER APPROVING FINAL ACCOUNT AND AUTHORIZING DISTRIBUTION

This matter coming on to be heard upon the final report and account filed herein, and upon the other files and records in this proceedings, and

It appearing that all debts and claims against said estate, including the state inheritance tax, have

been paid and receipts filed therefor, and that no objections to said report and account have been made within the time allowed by law, and that administration of the estate has been in all respects legal and proper, and that the assets of the estate are ready for distribution, and

It further appearing that the assets to be distributed consist of cash of about \$3,100.00, jewelry, rugs, pictures and ornaments, table-glass, china and silver, household furniture and equipment and the following securities:

Bonds

- 8 \$500 Heilig Theatre Co bonds, Certs. 176/183, 6% due 1929 extended to 8/2/39
- 4 \$1,000 Southern Pacific Co bonds, Certs. 8705, 8706, 20643, 43295—4½% Gold Bonds, due 1969
- 6 U. S. Defense Bonds—maturity value at \$25.00
- 17 U. S. Defense Bonds—maturity value at \$50.00

Stocks

- 475 sh United States National Bank (Portland) Cert. × 6318, common, par \$20
- 120 sh Keystone Custodian Fund B 2 cert. 3672, par \$1.00
- 110 sh Keystone Custodian Fund B 2 cert. 1051, par \$1.00
- 405 sh Keystone Custodian Fund B 3 cert. 6600, par \$1.00
- 345 sh Keystone Custodian Fund B 3 cert. 10750 par \$1.00
- 150 sh Keystone Custodian Fund K 1 cert. 16434, par \$1.00
- 150 sh Keystone Custodian Fund K 1 cert. 16435, par \$1.00

It further appearing that the sole beneficiaries under the will are: Kurt H. Koehler; Kurt H. Koehler and William L. Brewster, Trustees under the last Will and Testament of Bertha Koehler, deceased.

It Is Hereby Ordered, that the Final Report and Account be approved and that the assets be distributed and paid to said beneficiaries, and for the purpose of distribution the executors are authorized to execute all necessary instruments of transfer, and that on the filing of the receipts of said beneficiaries for the above mentioned assets, the executors be discharged.

And the Court further finds that the names and ages of the heirs and legatees of the said estate are as follows:

Name	Relationship	Age	Residence
Kurt H. Koehler	son	60	Portland, Oregon
Ilse Schloesser	daughter	55	Wupperthal-Elberfeld, Germany

Kurt H. Koehler & William L. Brewster, Trustees under the last Will and Testament of Bertha Koehler, dec'd Portland, Oregon.

Dated July 18th, 1944.

ASHBY C. DICKSON

Judge. [16]

EXHIBIT D

In the Circuit Court of the State of Oregon, for the
County of Multnomah, Department of Probate

No. 51211

In the Matter of the Estate of
BERTHA KOEHLER,

Deceased.

ORDER AS TO DISTRIBUTION
TO THE TRUSTEES

This matter coming on to be heard upon the petition of the executors for an Order as to Distribution to the Trustees; and

It appearing to the Court that heretofore the executors filed their Final Report and Account herein, and that on July 18th, 1944, an Order was entered, approving said Final Account and authorizing distribution; and

It further appearing that by Executive Order No. 8389, of the President of the United States, the term "National" shall include "Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order," and by General License No. 30A, a "Blocked Estate" is defined "As used in this general license, the term "blocked estate" shall mean any decedent's estate in which a national of a blocked country has an interest. A person shall be deemed to have an interest in a decedent's estate if

he (i) was the decedent; (ii) is a personal representative; or (iii) is a creditor, heir, legatee, devisee, distributee, or beneficiary''; and

It appearing by the terms of the Will of Bertha Koehler that one-half of the net estate herein was given to Kurt H. Koehler and William L. Brewster as Trustees for Ilse Schloesser as beneficiary, and that by the above mentioned definitions Ilse Schloesser is a national of Germany and subject to the provisions of said Executive Order, and that Portion of the estate which is distributable to the Trustees is a blocked estate; and

It further appearing that Federal Treasury officials have advised the executors herein to obtain from this Court an Order that the portion of the assets of this estate distributable to the Trustee should be distributed to them as a blocked account; and the Court being fully advised in the premises:

It Is Hereby Ordered that the property distributable to the Trustees by the order entered herein on July 18th, 1944, be distributed by the executors to the Trustees by deposit with them in a blocked account, to hold said property in trust for Ilse Schloesser, a national of Germany, as the ultimate beneficiary of said Trust: all in accordance with the statutes, proclamations, orders, and regulations of the United States relating thereto.

Dated this 29th day of August, 1944.

/s/ WALTER L. TOOZE,
Circuit Judge. [17]

EXHIBIT D

In the Circuit Court of the State of Oregon, for the
County of Multnomah, Department of Probate

No. 51211

In the Matter of the Estate of
BERTHA KOEHLER,

Deceased.

ORDER AS TO DISTRIBUTION
TO THE TRUSTEES

This matter coming on to be heard upon the petition of the executors for an Order as to Distribution to the Trustees; and

It appearing to the Court that heretofore the executors filed their Final Report and Account herein, and that on July 18th, 1944, an Order was entered, approving said Final Account and authorizing distribution; and

It further appearing that by Executive Order No. 8389, of the President of the United States, the term "National" shall include "Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order," and by General License No. 30A, a "Blocked Estate" is defined "As used in this general license, the term "blocked estate" shall mean any decedent's estate in which a national of a blocked country has an interest. A person shall be deemed to have an interest in a decedent's estate if

he (i) was the decedent; (ii) is a personal representative; or (iii) is a creditor, heir, legatee, devisee, distributee, or beneficiary''; and

It appearing by the terms of the Will of Bertha Koehler that one-half of the net estate herein was given to Kurt H. Koehler and William L. Brewster as Trustees for Ilse Schloesser as beneficiary, and that by the above mentioned definitions Ilse Schloesser is a national of Germany and subject to the provisions of said Executive Order, and that Portion of the estate which is distributable to the Trustees is a blocked estate; and

It further appearing that Federal Treasury officials have advised the executors herein to obtain from this Court an Order that the portion of the assets of this estate distributable to the Trustee should be distributed to them as a blocked account; and the Court being fully advised in the premises:

It Is Hereby Ordered that the property distributable to the Trustees by the order entered herein on July 18th, 1944, be distributed by the executors to the Trustees by deposit with them in a blocked account, to hold said property in trust for Ilse Schloesser, a national of Germany, as the ultimate beneficiary of said Trust: all in accordance with the statutes, proclamations, orders, and regulations of the United States relating thereto.

Dated this 29th day of August, 1944.

/s/ WALTER L. TOOZE,
Circuit Judge. [17]

Exhibit E

ASSETS DISTRIBUTED TO TRUSTEES AS OF
JULY 31, 1944

Cash		\$ 1,814.76
		Appraised
		as of
		11/20/43
Bonds		\$ 2,065.00
4 \$500.00 Heilig Theatre Co. 6% bonds, Nos. 176/179, due 1929 ex- tended to 8/2/39, held by First National Bank of Portland un- der receipt No. 41—Feb. and Aug.	\$ 840.00	
2 \$1000.00 Southern Pacific 4½% Gold Bonds, due 1969, Nos. 8705/6	1,225.00	
Stocks		12,094.25
115 Keystone B-2.....	\$ 3,076.25	
150 Keystone K-1.....	2,415.00	
465 Keystone S-2.....	6,603.00	
(In addition to above stocks an item of 237 shares United States National Bank of Portland, par \$20, appraised at \$9,480, is still held by executors and not dis- tributed to trustees by reason of refusal of Bank to act until ap- proval of Alien Property Cus- todian)		
Jewelry		4,636.50
Household Furniture and Equipment....		533.75
Real Estate: Undivided one-half.....		20,040.00
(a) West 85 feet of Lots 7 and 8 in south half of Double Block J in City of Portland.....	\$20,000.00	
(b) Lots 16 and 17 in Block 8 Santa Rosa Park Addition to East Portland		40.00

Exhibit F

ASSETS DELIVERED TO BANK OF CALIFORNIA,
NATIONAL ASSOCIATION, IN BLOCKED
ACCOUNT

Balance Trustee's Checking account on Aug. 1, 1944	\$ 2,973.01
Four \$500 Heilig Theatre Company 6% bonds, Nos. 176 to 179, inclusive, due 1929 extended to August 2, 1939; held by First National Bank of Portland under its Receipt 41.....	840.00
Two \$1000 Southern Pacific 4½% gold bonds due 1969, Nos. 8705 and 8706.....	1,225.00
115 shares Keystone Custodian Fund B-2.....	3,076.25
150 shares Keystone Custodian Fund K-1.....	2,415.00
465 shares Keystone Custodian Fund S-2.....	6,603.00
Total.....	<hr/> \$17,132.26

EXHIBIT G

Treasury Department	License No. S.F. 43790
Office of the Secretary	Date October 18, 1944

COPY OF LICENSE

(Granted under the authority of Executive order No. 8389 of April 10, 1940, as amended, and the regulations and rulings issued thereunder.)

File to (Name of Licensee): Kurt H. Koehler and William L. Brewster; (Address of Licensee): 604 Mead Building, Portland, Oregon.

Sirs:

1. Pursuant to your application of September 30, 1944, the following transaction is hereby licensed:

Engage in the following transactions in your official capacities, as trustees of the trust created under the Will of Bertha Koehler, deceased:

- (a) Payments of distributive shares of principal or income to all persons legally entitled thereto who are not nationals of any of the foreign countries designated in the Order; and
- (b) Other transactions arising in the administration of the trust which might be engaged in of no national of any of the foreign countries designated in the Order were a beneficiary, co-trustee or co-representative of the trust.

This license is issued subject to the powers and authorities of the Alien Property Custodian under Executive Order No. 9193, and your attention is directed to General Orders Nos. 5, 6 and 20 of the Alien Property Custodian.

This license is authorized provided all payments to blocked nationals of one of the countries designated in the Order shall be made to blocked accounts in the names of the respective payees, as nationals of such countries, in a domestic bank.

* * * see reverse * * *

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license. [20]

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

4. This license is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secretary of the Treasury.

FEDERAL RESERVE BANK OF SAN
FRANCISCO,

By MARTIN S. PEPPER.

The Act of October 6, 1917, as amended, provides in part as follows:

“* * * whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.”

Note: If this license covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with.

(Reverse)

This license shall not be deemed to authorize;

(1) Distribution of the Estate of Bertha Koehler, deceased, to the trustees as such transaction may be effected pursuant to General License No. 30A.

(2) The trustees to engage in any transaction at the request, or upon the instructions, of any beneficiary, co-trustee or co-representative of the trust, or other person who is a national of any of the foreign countries designated in the Order. [21]

EXHIBIT H

Form APC-3, August, 1942.

United States of America
Office of Alien Property Custodian

Report by Persons or Officers, Acting under Judicial Supervision or in any Court or Administrative Action or Proceeding, of Property or Interest of a Designated Enemy Country or a Designated National.

Copy of General Order No. 5.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned hereby issues the following regulation:

1. All designated persons shall file a report of any property or interest in which there is reasonable cause to believe a designated enemy country or a designated national has an interest.

2. Such reports shall be submitted in duplicate on Form APC-3, which is hereby adopted and made a part of this order, shall be executed under oath and shall contain complete information in the manner provided in Form APC-3.

3. For the purposes of this order the terms:

(a) "Designated persons" shall mean persons or officers acting under judicial supervision, or in any court or administrative action or

proceeding, or in partition, libel, condemnation or other similar proceedings, including, but not by way of limitation,

- (1) executors,
- (2) administrators,
- (3) guardians,
- (4) committees,
- (5) curators,
- (6) trustees under wills, deeds or settlements,
- (7) receivers,
- (8) trustees in bankruptcy,
- (9) assignees for the benefit of creditors,
- (10) United States marshals,
- (11) sheriffs,
- (12) commissioners,
- (13) persons acting under trust agreements,
and
- (14) all other persons or officers acting in a
similar capacity;

(b) "Designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war (Germany, Italy, Japan, Bulgaria, Hungary and Rumania) and any other country with which the United States is at war in the future;

(c) "Designated national" shall mean any person in any place under the control of a designated enemy country or in any place with which, by reason of the existence of a state of war, the United States does not maintain postal communication.

4. Upon the execution of such report it shall be forwarded on or before October 1, 1942, to the Office of the Alien Property Custodian, Estates and Trusts Section, Washington, D. C. [22]

5. Subsequent to October 1, 1942, such report shall be filed on Form APC-3 by any designated person within thirty days from the date upon which such designated person qualifies.

Executed at Washington, D. C., August 3, 1942.

LEO T. CROWLEY,
Alien Property Custodian.

Instructions

1. Read carefully all of this report form, note the grouping of the several classes of property, and read instructions before beginning to make report. Use typewriter where possible, otherwise write legibly in ink.

2. Make separate reports on separate forms for each action, case, estate, trust, etc.

3. Do not leave any schedule or question unanswered. If a negative answer is intended, write "None" or "No".

4. If the space provided in any schedule in this form is inadequate, a complete schedule in like form and bearing the corresponding schedule number must be prepared, signed, attached to this report, and made a part thereof. Do not put a part of the information in the space on this form and part on an attached sheet.

5. If the person making the report holds jointly with others any of the property mentioned in any of the schedules, this fact must be stated in such schedules, with the names and addresses of the joint holders or custodians.

6. If in doubt as to "any place which, by reason of the existence of a state of war, the United States does not maintain postal communication", consult the nearest Post Office.

7. This form is to be executed and filed in duplicate.

To the Alien Property Custodian,
Washington, D. C.

The undersigned, pursuant to General Order No. 5 of the Alien Property Custodian, makes the following report of the property or interest in which there is reasonable cause to believe a designated enemy country or a designated national, as defined in said General Order No. 5, has an interest, to wit:

Part A

Person Reporting: William L. Brewster, 604 Mead Building, [23] Portland, Multnomah County, Oregon.

If jointly with others, their names and addresses:

Name: Kurt H. Koehler.

Address: 604 Mead Building, Portland, Multnomah County, Oregon.

Part B

Name of Designated Enemy Country or
Designated National

Name: Ilse Schloesser.

Last known Residence or Address: Wupperthal
Elberfeld, Germany.

Citizenship: U.S.A.

Name and Address of Attorney or Representative
in the United States: Wm. L. Brewster, 604 Mead
Building, Portland, Oregon.

Schedule 1

Capacity in Which Person Reporting is Acting

State capacity in which person reporting is acting; when and how appointed; attach copy of will, trust agreement or other instrument (if any), with statement when and where recorded; in case of decedent's estate, give name of deceased; in case of Court or administrative action or proceeding, give title and character of action or proceeding, date commenced, name of court, docket number, and name and address of attorney of record. Give general statement as to status of the administration of the estate, when last account was filed, when next account and final account are likely to be filed, and when estate is likely to be finally settled. [24]

Schedule 1

The reporter, together with above mentioned Kurt H. Koehler, are executors under the last will and testament of Bertha Koehler, a copy of which is attached. They are likewise Trustees for Ilse Schloesser under said will. The Probate proceedings in Estate of Bertha Koehler are entitled, In the Circuit Court of the State of Oregon, for the County of Multnomah, Department of Probate, In the Matter of the Estate of Bertha Koehler, deceased, No. 51 211, and were commenced on November 29, 1943. The final report and account was filed on June 7, 1944, and an order approving the final account and authorizing distribution was entered on July 18, 1944. An order as to distribution to the Trustees was entered on August 29, 1944. After recitals said order reads as follows:

“It Is Hereby Ordered that the property distributable to the Trustees by the order entered herein on July 18th, 1944, be distributed by the executors to the Trustees by deposit with them in a blocked account, to hold said property in trust for Ilse Schloesser, a national of Germany, as the ultimate beneficiary of said Trust; all in accordance with the statutes, proclamations, orders, and regulations of the United States relating thereto.”

Distribution to Kurt H. Koehler, one of the beneficiaries, has been completed. Distribution of the remaining portion of the Estate to Kurt H. Koehler and William L. Brewster, Trustees, has been completed except as to cash, about \$189.46 and 237 shares of the capital stock of United States National Bank of Portland (Oregon).

When the Alien Property Custodian and the Treasury Department consent and approve the distribution to the Trustees, including the portion of the assets which the executors have distributed, the estate can be finally settled. [25]

Schedule 3

Attached is copy (omitting affidavits and certificate) of inventory and appraisement of the Estate of Bertha Koehler, deceased. The real property was owned in fee simple and free from encumbrances except taxes and city liens which have now been paid.

Of the real estate, Item 1 was sold during administration for \$8003.15 net. Item 2 is a 3 story brick store and hotel building. Item 3 is unimproved.

On July 31, 1944 the following property was distributed or ready for distribution to Kurt H. Koehler and William L. Brewster, Trustees under the last will and testament of Bertha Koehler, deceased.

Cash	\$ 1,439.46
Distributed 7/31/44.....	\$1,250.00
Held by Executors for trust account	189.46
Bonds	
4—500 Heilig Theatre Co. 6% bonds, Nos. 176/179, due 1929, extended to 8/2/39, held by First Nat. Bank Portland, under Receipt No. 41.....	\$ 840.00
2—\$1,000 Southern Pacific 4½ Gold bonds, due 1969, Nos. 8705/6	1,225.00
10—\$50 U S Defense Bonds, issued July, Sept, Oct, Nov 1943	375.00
(U S Defense Bonds were redeemed on Aug 11 1944 for \$375.50)	
Stocks	
237 sh. United States Nat Bank (Portland) Par \$20—Comm. Cert. No. X 6318 Cert. No. 9	\$ 480.00
115 sh. Keystone Custodian Fund B-2 Par \$1 21091	3,076.25
375 sh. Keystone Custodian Fund B-3 Par. \$1 29177	6,813.75
150 sh. Keystone Custodian Fund K-1 Par. \$1 23434	2,415.00
(375 sh Keystone Custodian Fund B-3 were sold for \$6641.25 and with pro- ceeds 465 sh Keystone Custodian Fund S-2 were bought for \$6,603.00)	
Jewelry	4,636.50
Household furniture and equipment.....	533.75
Real Estate: Undivided one-half	
(a) West 85 ft of Lots 7 and 8 in S½ of Double Block J in City of Portland.....	20,000.00
(b) Lots 16 and 17 in Block 8 Santa Rosa Park Add to East Portland.....	40.00
Total.....	<hr/> \$50,874.71

The estimated annual income from the above for the Trust for Ilse Schloesser named in Part B is \$3105. [26]

In the Circuit Court of the State of Oregon for the
County of Multnomah Department of Probate

No. 51211

In the Matter of the Estate of

BERTHA KOEHLER,

Deceased.

INVENTORY AND APPRAISEMENT

PERSONAL PROPERTY

Cash in Bank of California.....	\$	695.10
Bonds		
4 \$1000 Heilig Theatre Co. bonds, Certs. 178/183, 6% due 1929 extended to 8/2/39 at 42		1,680.00
4 \$1,000 Southern Pacific Co. bonds, Certs 8705, 8706, 20643, 43295— 4½% Gold Bonds, due 1969 at 61¼	\$2,450.00	
Int.....	9.50	
		2,459.50
5 \$1,000 Pennsylvania R. R. 5 yr. Debentures, Certs. TM 12447/51 at 99	4,950.00	
Int.....	22.10	
		4,972.10

(Correcting note: The first bond item should read “8 \$500 Heilig Theatre Co bonds, Certs 176/183” etc.)

U. S. Defense Bonds, payable to Bertha Koehler and Kurt H. Koehler

1942—\$25 denomination due at maturity

December	Q84263460 E	\$18.75	
January	Q10848773 E	19.00	
July	Q30270538 E	18.87	
March	Q14680195 E	19.00	
February	Q13743637 E	19.00	
April	Q14946739 E	19.00.....	113.62

1942—\$50 denomination due at maturity

May	L 6911569 E	38.00	
September	L13362215 E	37.75	
October	L12671489 E	37.75.....	113.50

1943

November	L57000340 E	37.50 each	525.00
November	L57000341 E		
November	L57000342 E		
November	L56506984 E		
October	L56506689 E		
September	L50301535 E		
September	L50301536 E		
September	L50301537 E		
July	L40863187 E		
July	L40863217 E		
June	L37473395 E		
May	L32708432 E		
April	L31774873 E		
March	L30011616 E		

Stocks

475 sh. United States National Bank (Portland) Cert X 6318 Common, par \$20.....	\$ 19,000.00
200 sh. Phillips Petroleum, Certs 194106, 205, 796 at 44 no par.....	8,800.00
100 sh. Keystone Custodian Fund B 1 Cert. 2032, par \$1.00.....	2,849.00
120 sh. Keystone Custodian Fund B 2 Cert. 3672, par \$1.00.....	3,210.00
110 sh. Keystone Custodian Fund B 2 Cert. 1051, par \$1.00.....	2,942.50

405 sh. Keystone Custodian Fund B 3 Cert. 6600, par \$1.00.....	7,358.85
345 sh. Keystone Custodian Fund B 3 Cert. 10750, par \$1.00.....	6,268.65
150 sh. Keystone Custodian Fund K 1 Cert. 16434, par \$1.00.....	2,415.00
150 sh. Keystone Custodian Fund K 1 Cert. 16435, par \$1.00.....	2,415.00
(All except K-1 have 9/10 appreciation warrants attached)	
150 sh Portland Industries Financing Service, Cert. 413 par \$10.....	1.00
500 sh Goldfield Consolidated Mines Co., Cert. 8/27/29 8220/1 par \$1.00.....	78.12
19½ sh Gambrinus Brewing Co., Cert. 268, par \$100: 11.92.....	232.44
Miscellaneous	
Jewelry	\$ 6,043.00
Piano	}----- 1,380.00
Rugs	
Pictures and ornaments	
Table-glass, china and silver	
Other household furniture and equipment]	
Real Estate—All in Multnomah County, Oregon	
1. Lots 6 and 7 Block 176 Couch's Addition to City of Portland.....	\$ 7,500.00
2. West 85 ft of Lots 7 and 8 in South Half of Double Block J in City of Portland.....	40,000.00
3. Lots 16 and 17 in Block 8, Santa Rosa Park Add to East Portland	80.00
Total.....	<hr/> \$121,132.38

Schedule 2

Nature of Interests of Persons Named
in Part B Hereof

Give their respective interests and the names and addresses of all other persons interested, stating whether as legatees, devisees, creditors or otherwise. Give duration of such interests, whether for life, for years, or otherwise. In case of guardianships for life estates or in other cases where relevant, give ages of persons named in Part B hereof. None.

Schedule 3

Nature of Property or Interest Therein

State in detail all property, real, personal, and mixed, including cash on hand. Where reporter is an executor, administrator, or other personal representative of a decedent, include all real estate of which the deceased died seized or possessed, or in which he was in any way interested; describe by meets and bounds and title reference all real estate listed, including character and extent of estate or title to or in same, and whether the property is improved or unimproved, and if improved, character of improvements, estimated market value of the property and encumbrances upon same; if complete list of property or interest therein can not be given, state reason therefor and complete by supplemental report as soon as possible; if inventory or account is a matter of record, state when and where recorded and attach copy thereof, and if not

a matter of record, state reason therefor; state actual or estimated annual income from estate or trust, and estimated values of distributable shares of principal and of annual distributable income therefrom of persons named under Part B; if estate or trust is audited by public accountant, state name and address. In all other cases give similar complete information.

Schedule 4

Interests of Unknown Designated Nationals

If the person reporting has reasonable cause to believe that any property or interest therein is owned by a designated national, and is not advised of the name thereof, state that fact, together with a statement of the interest thereof.

Nature and extent of the interest: None. [29]

Schedule 5

General Remarks

(Here include any relevant information not set forth above.)

Bertha Koehler died Nov. 20, 1943, and on said date and long prior thereto, was a citizen of the United States. Kurt H. Koehler and William L. Brewster at all times since birth have been citizens of the United States. Since distribution on or about July 31, 1944, the Trust Fund has been kept separate and unmingled with any other property.

[Seal]

WILLIAM L. BREWSTER

Signature of party making
report.

(Partnerships shall sign by member or duly authorized representative. Corporations or associations shall sign by officer or duly authorized representative, and shall affix corporate or official seal.)

Affidavit of Person Making Report

State of Oregon,
County of Multnomah—ss:

I, William L. Brewster, swear (affirm) that I am the person, or that I am the one of the Trustees and executors under the last will and testament Bertha Koehler making this report, that I am qualified and authorized to make this report and this affidavit, and to the best of my knowledge and belief the statements made in this report are true and accurate, and all material facts have been set forth.

WILLIAM L. BREWSTER

Signature of affiant

604 Mead Building

Subscribed and sworn to before me this 22 day of September, 1944.

[Notarial Seal]

FLORENCE M. WILLIAMS,

Notary Public for Oregon.

My commission expires Aug. 17, 1946. [30]

EXHIBIT I

TRANSACTIONS OF TRUSTEES

August 1, 1944, to Sept. 10, 1945

1944		
8/ 1	Cash in checking account—Bank of California	\$2,973.01
	Wolfgang Delbrueck—gift in mem- ory of Bertha Koehler.....	\$ 250.00
	Ella Fitzgerald—gift in memory of Bertha Koehler.....	550.00
	City Treasurer, final payment lighting system S. W. Washing- ton	18.80
8/ 9	Heilig Theatre Bond—interest.....	60.00
	Portland Wire & Iron Works— fire escape	18.38
8/21	Keystone K-1 dividend	180.00
9/12	Irving B. Lincoln, agent, Aug. 10 to Sept. 10 account.....	150.00
9/29	Bank of California, safe custody fees	4.50
	Bank of California, safe custody fees75
10/ 2	U. S. National Bank dividend.....	94.80
10/13	Irving B. Lincoln, agent, Sept. 10 to Oct. 9 account.....	150.00
10/19	Keystone Cus. Funds B-2 divi- dend	373.75
10/26	Southern Pacific, interest	45.00
11/13	U. S. 1943 income tax refund, prin. \$44.05, int. \$1.63.....	45.68
11/14	Irving B. Lincoln, agent, month ending Nov. 10	150.00
11/18	Keystone Custodian Fund S-2 dividend	302.25
11/22	1943 Bertha Koehler estate tax deficiency	113.17
12/11	Irving B. Lincoln, agent, month ending Dec. 8	150.00

That such property is in the process of administration by William L. Brewster and Kurt H. Koehler, as Executors and Trustees, acting under the judicial supervision of the Circuit Court of the State of Oregon for the County of Multnomah;

And determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country, (Germany);

And having made all determinations and taken all action required by law, including appropriate consultation and certification, and deeming it necessary in the national interest,

Hereby Vests in the Alien Property Custodian the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. This Order shall not be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when it should be determined to take any one or all of such actions.

Any person, except a national of a designated enemy country, asserting any claim arising as a re-

sult of this Order may, within one year from the date hereof, or within such further time as may be allowed, file with the Alien Property Custodian on Form APC-1 a notice of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim. [33]

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Executed at Washington, D. C. on March 30, 1945.

[Official Seal]

/s/ JAMES E. MARKHAM,
Alien Property Custodian.

I hereby certify that the within is a true and correct copy of the original paper on file in this office.

JAMES E. MARKHAM
Alien Property Custodian.

By /s/ LLOYD L. SHANKS,
Secretary for Records, Office of
Alien Property Custodian.

EXHIBIT K

Federal Reserve Bank of San Francisco

Fiscal Agent of the United States

San Francisco 20, California

April 19, 1945.

Messrs. William L. Brewster and
Kurt H. Koehler,
604 Mead Building,
Portland, Oregon.

Re: Estate of Bertha Koehler, deceased

Dear Sirs:

Reference is made to Vesting Order No. 4780 executed by the Alien Property Custodian.

In view of such order you are authorized, so far as Executive Order No. 8389, as amended, is concerned, to engage in any transaction with respect to all right, title, interest, and claim of any kind or character whatsoever of Ilse Schloesser, and her heirs and distributees, in and to the estate of Bertha Koehler, deceased, on and after April 23, 1945, which might be engaged in without specific license of the Treasury Department if no national of any blocked country had any interest in such property.

License No. SF 43790 issued under Executive Order No. 8389, as amended on October 18, 1944 is hereby revoked as of the opening of business on April 23, 1945.

It is suggested that you communicate with the Office of the Alien Property Custodian, 417 Mont-

gomery Street, San Francisco 4, California, concerning the applicability to the estate under reference of any orders, rulings, or regulations of such office.

Yours very truly,

/s/ MERRITT SHERMAN,
Assistant Cashier. [35]

EXHIBIT L

Form APC-1, June, 1942
United States of America
Office of Alien Property Custodian

NOTICE OF CLAIM ARISING AS A
RESULT OF VESTING ORDER

These instructions should be read carefully before filling out this form.

A. The use of Form APC-1 is expressly limited to person (1) who assert a claim arising as a result of a specific vesting order and (2) who are permitted to file a notice of claim pursuant to the provisions of such vesting order or pursuant to regulations promulgated by the Office of Alien Property Custodian.

B. This form must be executed and filed in triplicate with the Office of Alien Property Custodian, Washington, D.C. The original shall be executed under oath before an officer authorized to admin-

ister oaths, or if executed outside of the United States, before a diplomatic or consular officer of the United States.

C. If the space provided is insufficient to furnish information required herein, utilize properly identified schedules attached as exhibits.

D. If claimant has no knowledge as to any particular information required, so indicate by inserting the term "No knowledge" in blank space.

E. Wherever citizenship or subject status is required to be specified herein, (1) in the case of a partnership, the citizenship or subject status of all partners must be indicated; (2) in the case of a corporation, association, or other organization, the state, country or other jurisdiction under the laws of which said corporation, association or other organization was organized must be indicated as well as the principal place of doing business; (3) in the case of a stateless person, so indicate.

F. The term "person" as used in this form means an individual, partnership, corporation, association, or other organization or body politic, and the plural as well as the singular thereof. [36]

G. Hearing on the claim, if the notice thereof is properly executed and if full and complete information is given, will be granted in accordance with the rules and regulations of the Custodian only after notice of the place, date and time of such hearing is mailed by the Custodian to the person specified in Section numbered "2" of this form, at the address there given.

To the Alien Property Custodian,
Washington, D. C.

The undersigned, hereinafter referred to as "claimant", desiring to take advantage of the procedure established by the Office of Alien Property Custodian for the filing of claims arising as a result of a specific vesting order, hereby gives you notice of claim and requests a hearing thereon:

1. a. Name of claimant: Kurt H. Koehler and William L. Brewster as executors and trustees (See Schedule 1.a.)
b. Address of claimant: 604 Mead Building, Portland 4, Oregon.
2. Notice or communications with respect to this claim are to be sent to: William L. Brewster whose address is: 604 Mead Building, Portland 4, Oregon.
3. a. Claimant is a citizen or subject (see Instruction E) of: United States.
b. Has claimant been a citizen or subject of another country at any time since April 8, 1940? No.
c. Specify all countries in which claimant has resided at any time since April 8, 1940 (if claimant is a partnership state the countries in which all partners have resided; if claimant is a corporation, association or other organization, specify all principal places of doing business); Claimants have resided in the United States continuously since April 8, 1940. [37]

d. Has claimant or claimant's property at any time been subjected to "freezing controls" pursuant to Executive Order No. 8389, as amended, for the reason that claimant was or is a "national" of a foreign country designated in said Executive Order? No. If answer is "yes", list all such foreign countries of which claimant has been deemed to be a "national": Property which claimants hold as fiduciaries was subject of "freezing control" under Executive Order No. 8389 because Ilse Schloesser, named as a contingent beneficiary of the trust administered by claimants, was deemed to be a "national" of Germany.

4. a. Describe accurately the vested property with respect to which this notice of claim is filed: See Schedule 4. a.
b. Immediately before said property was vested in the Alien Property Custodian, it was in the possession of the following person (see Instruction F) Claimants and The Bank of California, National Association, whose address then was: 604 Mead Building, Portland 4, Oregon. respectively.
c. Said property was vested in the Alien Property Custodian by vesting Order Number 4780 dated March 30, 1945.
5. Specify the nature of the claim of which notice is hereby given. (Give full and precise information as to the basis for the claim, the amount thereof and all pertinent circumstances upon which claimant rules. If necessary to indicate

the nature of the claim, pertinent documents, properly identified may be attached as exhibits.) See Schedule 5. [38]

6. Claimant represents and alleges that the claim on which notice is given is in all respects bona fide and that there are no set-offs, counterclaims or defenses against said claim, except as are specified below with particularity: None; that this notice of claim is not filed in collusion with any person for the purpose of circumventing or avoiding the terms and provisions of the Trading with the Enemy Act, as amended (including, but not limited to, the amendment thereof by Title III of the First War Powers Act, 1941), or any rules or regulations issued pursuant thereto; and that claimant knows of no person (see Instruction F) whatsoever, except as specified below with particularity, who has any interest whatsoever, direct or indirect, legal, equitable or beneficial, in the claim of which notice is hereby given, or in the proceeds thereof:

Name	Address	Citizenship or Subject Status (See Instruction E)	Nature of Interest
Else Schloesser	Elberfeld, Germany	National of Germany	Contingent beneficiary under trust
Kurt H Koehler	2804 N. W. Westover Portland, Oregon	United States	Contingent beneficiary under trust

Dated this 20 day of Sept., 1945.

/s/ KURT H. KOEHLER

Claimant

WILLIAM L. BREWSTER

As such Executors and Trustees.

If claimant is an individual, his signature alone is sufficient unless the notice of claim is executed by a duly authorized representative. Partnerships must sign by a member or duly authorized representative. Corporations, associations or other organizations or bodies politic must sign by a duly authorized officer or other duly authorized representative and must affix the corporate or official seal, unless there is no such seal, in which case such fact must be indicated. Any person executing this form in a representative capacity must indicate in what capacity he signs and (except where such person is a member of a partnership or officer of a corporation) must attach a properly identified and verified copy of his power of attorney or other evidence of authority.

AFFIDAVIT

United States of America,
State of Oregon,
County of Multnomah—ss:

I, Kurt H. Koehler and William L. Brewster, swear (or affirm) that I am the claimant specified in the foregoing notice of claim (or the of the claimant, duly authorized to execute this notice of claim): that the facts stated in said notice of claim and all exhibits attached thereto are true and correct; and that I have knowledge of no fact re-

quired to be set forth in the above form which is not fully and accurately set forth therein.

/s/ KURT H. KOEHLER,

(Affiant)

/s/ WILLIAM L. BREWSTER,

(Affiant)

Subscribed and sworn to (or affirmed) before me this 20 day of Sept., 1945.

[Notarial Seal]

/s/ FLORENCE M. WILLIAMS,

Notary Public for Oregon.

My commission expires: 8-27-46. [40]

Schedule 1.a.

Answer to question 1.a.

Kurt H. Koehler and William L. Brewster as executor of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and Kurt H. Koehler in his individual capacity.

Schedule 4.a.

Answer to question 4.a.

The "vested property" as described in Vesting Order No. 4780, hereinafter referred to, is as follows:

"All right, title, interest and claim of any kind or character whatsoever of Ilse Schloes-

ser, and her heirs and distributees, in and to the estate of Bertha Koehler, deceased, and under clause 'Third' of the will of said Bertha Koehler, and paragraph (g) thereof per codicil dated July 11, 1933, including the right to demand from the executors of said estate and from the trustees under said will payment and delivery of the principal and income of a certain trust fund, for which provision is made in said clause 'Third' of said will and said codicil thereto."

Schedule 5.

Answer to question 5.

1. Bertha Koehler, herein called the decedent, a citizen of the United States, died on November 20, 1943, a resident of Portland, Multnomah County, Oregon. Decedent left a last will and testament dated February 14, 1933, and a codicil thereto dated July 11, 1933. On November 29, 1943, said will and codicil were duly admitted to probate by the Circuit Court of the State of Oregon for Multnomah County, In Probate, and claimants were thereupon appointed and thereafter qualified as executors thereof. A certified copy of said will and codicil is hereto attached. Claimants have not been discharged as executors and are now the duly appointed, qualified and acting executors of said will and codicil.

2. On June 6, 1944, claimants filed in said Circuit Court their final account as executors and on July 18, 1944, said Circuit Court made its order approving said final account and authorizing distribution of said estate, by claimants as executors, and in compliance with said order, and except in the respects hereinafter noted, claimants, as executors, distributed to themselves, as trustees under said last will and testament and codicil, the property of said estate which, as trustees, they were entitled to receive under said order authorizing distribution.

3. On August 29, 1944, said Circuit Court, on petition of claimants as executors, directed that the assets then held [41] by claimants as trustees be held in a blocked account in accordance with Executive Order No. 8389 and General License 30 A.

4. On September 27, and 29, 1944, claimants, as trustees, and in accordance with said order dated August 29, 1944, deposited with The Bank of California, National Association, at its office at Portland, Oregon, in a blocked account, personal property constituting assets of said trust created by paragraph "Third" of the last will and testament of decedent and the codicil thereto. Thereupon the Federal Reserve Bank of San Francisco issued to claimants as such trustees a license, No. SF43790, dated October 18, 1944, to carry on certain transactions with respect to said blocked account.

5. The assets of the estate of the decedent distributable by claimants as executors to legatees in-

cluded 475 shares of the capital stock of the United States National Bank of Portland (Oregon). At the time of the making by said Circuit Court of the order of distribution dated July 18, 1944, said capital stock was registered in the stock record books of The United States National Bank of Portland (Oregon) in the name of decedent. Claimants have requested said The United States National Bank of Portland (Oregon) to transfer 237 of said shares to claimants as such trustees but said The United States National Bank of Portland (Oregon) has refused to transfer said shares in compliance with said request.

6. Ilse Schloesser, the person named in paragraph "Third" of said will and in said codicil, was the daughter of the decedent, Bertha Koehler, and at the time of the decedent's death was a resident of Germany. Claimants last had information relating to Ilse Schloesser in the month of May, 1945, and that time claimants were informed that she was still living and was still a resident of Germany.

7. As of the month of May, 1945, the last date as of which claimants had information relating to Ilse Schloesser and her family, claimants were informed that Ilse Schloesser was then married to Kurt Schloesser, who was then living and was a resident of Germany, and that the children of Ilse Schloesser, including Maida D. Grottian, a daughter, by a former marriage, and Elizabeth Schloesser, a daughter by her present husband, and Peter Grot-

tian, son of Maida D. Grottian, were then living and were residents of Germany.

8. As of the opening of business on April 23, 1945, the Federal Reserve Bank of San Francisco, acting as Fiscal Agent of the United States, by a letter to claimants dated April 19, 1945, revoked said license No. SF43790 and authorized claimants, so far as Executive Order No. 8389 is concerned, to engage in any transaction which might be engaged in if no national of any blocked country had any interest in the property involved.

9. Kurt H. Koehler, one of the claimants herein named, is a son of decedent, Bertha Koehler, and upon the happening of certain events which may happen in the future will be entitled to all of the principal and income of said trust now administered by claimants. [42]

10. Claimants assert that said Vesting Order No. 4780 is erroneous and vests or purports to vest in the Alien Property Custodian rights greater than those to which he is entitled under the Trading with the Enemy Act in the following respects:

(a) No "heirs" or "distributees" of Ilse Schloesser have any vested rights under the terms of said trust and the rights of all beneficiaries thereunder are contingent and under certain contingencies all of the income and principal of said trust will be distributable to a citizen or citizens of the United States, resi-

dents therein, with the consequence that the Alien Property Custodian has no right to vest in himself the right, title and interest of the "heirs and distributees" of Ilse Schloesser;

(b) Neither Ilse Schloesser nor any person claiming under her has any right to demand of claimants as executors or as trustees any payment or delivery of any principal or income of said trust, with the consequence that the Alien Property Custodian has no right to vest in himself "the right to demand from the executors of said estate and from the trustees under said will, payment and delivery of the principal and income" of said trust;

(c) The property described in said vesting order is not "payable or deliverable" to Ilse Schloesser or to any other national of any enemy country;

(d) The property described in said vesting order is not "owned or controlled" by Ilse Schloesser or by any national of any enemy country. [43]

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes Now the defendant, James E. Markham, as Alien Property Custodian, by Carl C. Donough, United States Attorney for the District of Oregon, and J. Robert Patterson, Assistant United States Attorney, and moves the Court for an order dismissing the action against James E. Markham as Alien Property Custodian for the reason that the complaint fails to state a claim against the defendant, James E. Markham as Alien Property Custodian, upon which relief can be granted in that it appears from the face of the complaint that the property which is the subject of the action has not been delivered or paid to the defendant, James E. Markham as Alien Property Custodian, and that neither the Trading With the Enemy Act nor any other statute of the United States authorizes a suit against the defendant, James E. Markham, as Alien Property Custodian, for a declaration of the right and title of any persons as against the Custodian or for a declaration of the efficacy or validity of a vesting order issued by the Alien Property Custodian until after the possession of the vested property is transferred, delivered or [44] paid to the Alien Property Custodian.

Dated at Portland, Oregon, this 6th day of December, 1945.

CARL C. DONAUGH,

United States Attorney for
for the District of Oregon.

J. ROBERT PATTERSON,

Assistant United States
Attorney.

United States of America,
District of Oregon—ss.

Due and legal service of the within Motion to Dismiss is hereby accepted within the State and District of Oregon, on the 6th day of December, 1945, by receiving a copy thereof duly certified to as true and correct copy of the original by Carl C. Donough, United States Attorney for the District of Oregon, through J. Robert Patterson, Assistant United States Attorney.

HART, SPENCER,
McCULLOCH & ROCKWOOD,
/s/ FLETCHER ROCKWOOD,
Attorneys for Plaintiffs.

United States of America,
District of Oregon—ss.

Due and legal service of the within Motion to Dismiss is hereby accepted within the State and District of Oregon on the 6th day of December, 1945, by receiving a copy thereof duly certified to as true and correct copy of the original by Carl C. Donough, United States Attorney for the District of Oregon, through J. Robert Patterson, Assistant United States Attorney.

/s/ WM. L. BREWSTER,
Attorney for Plaintiffs.

[Endorsed]: Filed Dec. 6, 1945.

[Title of District Court and Cause.]

ANSWER

The defendant, James E. Markham, as Alien Property Custodian, answering the complaint herein:

1. Denies those allegations contained in paragraph I of the complaint which allege that this action arises under the Trading with the Enemy Act of October 6, 1917, as amended (40 Stat. 411; U. S. C. A., Title 50 App.), or under § 9 thereof. Denies any knowledge or information sufficient to form a belief as to those allegations contained in paragraph I of the complaint which allege that the plaintiffs or either of them has not been or is not now an enemy or an ally of an enemy of the United States.

2. Denies that he has any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph XII of the complaint. [47]

3. Denies each and every allegation contained in paragraph XVII of the complaint, except that the plaintiff Kurt H. Koehler is the son of the decedent Bertha Koehler.

And or a First, Separate and Complete Affirmative Defense to the Complaint, this Defendant Alleges:

4. The court lacks jurisdiction over the subject matter of this action.

And for a Second, Separate and Complete, Affirmative Defense to the Complaint, This Defendant Alleges:

5. The complaint fails to state a claim against the defendants James E. Markham upon which relief can be granted.

And for a Third, Separate and Complete, Affirmative Defense to the Complaint, This Defendant Alleges:

6. The plaintiff Kurt H. Koehler, in his individual capacity, lacks capacity to sue in that insofar as he is an heir or distributee of Bertha Koehler, deceased, either contingent or otherwise, he is a national of a designated enemy country, as determined by this defendant in Vesting Order No. 4780 executed March 30, 1945, and published in the Federal Register on April 11, 1945 (10 Fed. Reg. 3928).

And for a Fourth, Separate and Partial Affirmative Defense to the Complaint, This Defendant Alleges:

7. There is a misjoinder of parties defendant in that the United States has consented to be sued through the Alien Property Custodian only under the provisions of the Trading with the Enemy Act, and that under the provisions of that act only the

Alien Property Custodian or the Treasurer of the United States is a proper party defendant.

JOHN F. SONNETT,
Assistant Attorney General.

HENRY L. HESS,
United States Attorney,
Portland, Oregon.

HARRY LeROY JONES,
ALBERT PARKER,
Special Assistants to the
Attorney General.

IRVING JAFFE,
Attorney, Alien Property Section, Claims Division,
Department of Justice.
Attorneys for James E. Markham, Alien Property
Custodian.

United States of America,
District of Oregon—ss.

Due and legal service of the within Answer is hereby accepted within the State and District of Oregon, on the 29th day of March, 1946, by receiving a copy thereof duly certified to as a true and correct copy of the original by Victor E. Harr, Assistant United States Attorney for the District of Oregon.

/s/ FLETCHER ROCKWOOD,
Attorney for Plaintiffs.

[Endorsed]: Filed March 29, 1946.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT, THE UNITED
STATES NATIONAL BANK OF PORT-
LAND (OREGON)

Comes now the defendant, The United States National Bank of Portland (Oregon), a national banking association, and for answer to plaintiffs' Complaint on file herein admits, denies, and alleges:

I.

Admits Paragraphs I, II, III, IV, V, and VI of plaintiffs' Complaint and the whole thereof; and

II.

For answer to Paragraphs VII and VIII alleges that it is without any knowledge or information as to the matters and things in said paragraphs alleged sufficient to form a belief concerning the same, and therefore, denies said paragraphs and the whole thereof;

III.

Answering Paragraph IX of plaintiffs' Complaint, defendant denies the same and the whole thereof except as hereinafter in defendant's further and separate answer expressly admitted;

IV.

Answering Paragraphs X, XI, XII, XIII, XIV, XV, and XVI alleges that it is without any knowl-

edge or information as to the matters and things in said paragraphs alleged sufficient to form a belief concerning the same, and therefore, denies said paragraphs and the whole thereof; [50]

V.

Answering Paragraph XVII defendant admits the same and the whole thereof

And for a further and separate answer to plaintiffs' Complaint this defendant alleges:

I.

That the assets of the estate of Bertha Koehler, deceased, distributable to the persons entitled thereto included Four Hundred Seventy Five (475) shares of the capital stock of the defendant The United States National Bank of Portland (Oregon) and that at the time of the making by the Circuit Court of the State of Oregon of its order of distribution in said decedant's estate on the 18th day of July, 1944, said capital stock was registered in the stock record books of the defendant The United States National Bank of Portland (Oregon) in the name of the decedant Bertha Koehler, and that plaintiffs thereafter requested said defendant to transfer Two Hundred Thirty Seven (237) shares of said stock to plaintiffs as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased; and that said defendant refused to transfer said shares in compliance with said request for the reason that said plaintiff-trustees

failed and neglected to lodge with the defendant-bank a good and sufficient clearance from the Alien Property Custodian as required under General Order No. 20 as issued and promulgated by said Alien Property Custodian, pursuant to and under the authority of the Trading with the Enemy Act as amended, and Executive Order No. 9095; and that upon receipt of a duly and regularly issued license as aforesaid lodged with it, The United States National Bank of Portland (Oregon) is ready, willing and able to transfer said shares to such persons as are then legally entitled to receive them.

Wherefore, defendant prays that plaintiffs' Complaint be dismissed as to this answering defendant.

PLATT, HENDERSON, WARNER,
CRAM & DICKINSON,

Attorneys for the defendant The United States National Bank of Portland (Oregon)

/s/ HAROLD J. WARNER,
Of Counsel for Defendant Bank.

State of Oregon,
County of Multnomah—ss:

I, R. M. Alton, being first duly sworn, say that I am a trust officer of The United States National Bank of Portland (Oregon), the defendant in the within entitled suit and that the foregoing Answer is true, as I verily believe.

/s/ R. M. ALTON,

Subscribed and sworn to before me this 5th day of April, 1946.

[Seal] /s/ H. F. PRIDEAUX,

Notary Public for Oregon.

My commission expires 3/12/49.

Due and timely service of the foregoing and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 5th day of April, 1946.

/s/ WM. L. BREWSTER,

Of Attorneys for Plaintiffs.

[Endorsed]: Filed April 6, 1946. [52]

[Title of District Court and Cause.]

ANSWER

Comes now defendant, The Bank of California, National Association, and for answer to the complaint of plaintiff admits, denies and alleges as follows:

I.

Answering Paragraph VI this defendant alleges that it has neither knowledge nor information of the matters therein alleged.

II.

Answering Paragraph VII this defendant admits that on or about September 27 and September 29, 1944, plaintiffs as trustees deposited with defendant personal property other than money, as set forth in

Exhibit F to plaintiffs complaint. In connection with said moneys, this defendant alleges that on or about July 29, 1944, plaintiffs, as trustees, opened a checking account with defendant; that on August 7, 1944, the balance of said account was \$3,490.00. Defendant admits the Federal Reserve Bank of San Francisco issued plaintiffs a license, No. SF 43790, dated October 18, 1944. Except as expressly admitted herein, defendant denies generally and specifically each and every allegation contained in said paragraph.

III.

Answering Paragraph VIII defendant alleges it has no knowledge of the matters therein alleged.

IV.

Answering Paragraph IX defendant alleges it has no knowledge of the matters therein contained.

V.

Answering Paragraph X defendant alleges it has no knowledge of the matters therein contained.

VI.

Answering Paragraph XI defendant alleges it has no knowledge of the matters therein contained.

VII.

Answering Paragraphs XVI defendant alleges it has no knowledge of the matters therein contained. Wherefore having answered the complaint of plaintiff, this defendant prays that the Court enter

such a judgment as is fit and proper under the circumstances.

HAMPSON, KOERNER,
YOUNG & SWETT,
R. R. MORRIS,

Attorneys for defendant, The Bank of California,
National Association.

State of Oregon,
County of Multnomah—ss:

Service of the foregoing Answer by copy, as prescribed by law is hereby admitted, at Portland, Oregon, this 1st day of May, 1946.

/s/ FLETCHER ROCKWOOD,
Attorney for Plaintiffs.

[Endorsed]: Filed May 1, 1946.

[Title of District Court and Cause.]

DEFENDANT'S MOTION FOR JUDGMENT
ON THE PLEADINGS

The defendant moves the court for judgment on the pleadings against the plaintiff herein.

HENRY L. HESS,
United States Attorney,
Portland, Oregon.

VICTOR E. HARR,
Assistant United States
Attorney.

HERMAN H. HAHNER,
Assistant United States
Attorney.

[Endorsed]: Filed No. 7, 1946.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the parties herein, through their respective attorneys, William L. Brewster, Fletcher Rockwood, and Hart, Spencer, McCulloch and Rockwood, representing the Plaintiffs and Henry L. Hess, United States Attorney, for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, representing the Defendants, that subject to the approval of the Court an order may be entered amending the Defendant's Answer as follows:

That Paragraph 2 thereof on Page 1 be amended by striking therefrom "III" and inserting in its stead "XII." Made and entered at Portland, Oregon, this 7th day of November, 1946.

HART, SPENCER, McCULLOCH
AND ROCKWOOD,
WILLIAM L. BREWSTER,
/s/ FLETCHER ROCKWOOD,
Attorneys for Plaintiffs.

HENRY L. HESS,
United States Attorney for the
District of Oregon.

VICTOR E. HARR,
Assistant United States Attorney.

Attorneys for Defendants.

[Endorsed]: Filed Nov. 12, 1946.

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

The case is dismissed for want of jurisdiction in that the United States has not consented to be made a co-defendant. The defendant may prepare Findings, if Findings are deemed necessary.

Dated January 30, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed Jan. 30, 1947.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for trial before the undersigned Judge on Thursday, January 23, 1947, plaintiffs were present in person and represented by their counsel, Fletcher Rockwood, and James E. Markham, as Alien Property Custodian of the United States, was represented by his counsel, Victor E. Harr and Herman H. Hahner, Assistant United States Attorneys for the District of Oregon; thereupon oral and documentary evidence was introduced by and on behalf of plaintiffs herein, and no evidence, oral or documentary, being produced by defendant, James E. Markham, Alien Property Custodian, and at the conclusion of all of the evidence the parties rested; and thereupon the cause

was argued to the Court by the respective parties and the same was by the Court taken under advisement; and the Court, having considered all the evidence introduced and the arguments of counsel, and having considered the defendant James E. Markham's Motion to dismiss the complaint, and defendant Markham's Motion for Judgment on the pleadings theretofore filed and argued by counsel for plaintiffs and defendant James E. Markham, which said Motions were taken under advisement memo of decision having been filed and vacated and now being advised in the [58] premises, makes and orders its Findings of Fact and Conclusions of Law, as follows:

I.

Plaintiffs are citizens of the United States and reside in Portland, Multnomah County, Oregon, and that this action arises under the Trading with the Enemy Act of October 6, 1917, as amended, (40 Stat. 411; U. S. C. A. Title 50, Append.).

That James E. Markham is the duly appointed, qualified and acting Alien Property Custodian, and exercises the authority vested in the Alien Property Custodian by Executive Order 9095, dated March 11, 1942, (Fed. Reg. 7, 1971), as amended by Executive Order 9193, dated July 6, 1942, (Fed. Reg. 7, 5205).

III.

That Bertha Koehler, a citizen of the United States, died November 20, 1943, a resident of Portland, Multnomah County, Oregon, leaving a last

Will and Testament dated February 14, 1933, and Codicil thereto dated July 11, 1933, which said Will and Codicil were duly admitted to probate by the Circuit Court, State of Oregon, for Multnomah County, in Probate, and that plaintiffs were thereupon appointed and thereafter qualified as executors thereof.

IV.

That on June 4, 1944, plaintiffs filed in said Circuit Court their Final Account as said executors, and on July 18, 1944, said Circuit Court issued an Order approving said final account and authorizing distribution of said estate by plaintiffs, as executors.

V.

That on August 29, 1944, plaintiffs, as executors, filed their Petition in Circuit Court, reciting that distribution to themselves, as Trustees of the Trust created by Paragraph Third of the Will and the Codicil thereto, should be made to themselves, as Trustees, to be held in a blocked account in accordance with Executive Order 8389, and General License No. 30A.

VI.

That pursuant to an Order of said Circuit Court, pursuant to said petition, plaintiffs distributed said estate in accordance with terms of the Will and Codicil, and in particular delivered to themselves, as Trustees of the Trust created by paragraph "Third" of the Will, as modified by said Codicil, one-half of the residue of said estate, and in accord-

ance with the Order of said Court delivered to defendant, the United States National Bank of Portland (Oregon) and defendant Bank of California, a National Association, in a blocked account, certain portions of said estate.

VII.

That the one-half of the residue of said estate thus paid to the Trustees of the Trust, created by said paragraph "third" of the will, as modified by said Codicil, was property bequeathed and devised to Ilsa Schloesser and her heirs and distributees.

VIII.

That defendant Markham, on March 30, 1945, made and executed his Vesting Order No. 4780, published April 11, 1945 (10 Fed. Reg. 3928). "vesting all right, title, interest and claim of any kind or character whatsoever of Ilsa Schloesser, her heirs and distributees in the estate of Bertha Koehler, deceased, and under clause "Third" of the Will of said Bertha Koehler, and paragraph (g) thereof, of Codicil dated July 11, 1933, including the right to demand from the executors of said estate, and from the Trustees of the said Will, payment and delivery of the principal and income of a certain trust fund, for which provision is made in said clause "Third" of said Will, and said Codicil thereto," and by said Vesting Order, defendant Markham further found that the aforesaid property was property payable or deliverable to, or claimed by, Nationals of a designated enemy country, Ger-

many, namely, Ilsa Schloesser, her heirs and distributees, and that such property is property within the United States, owned or controlled by the said Nationals of a designated enemy country, Germany.

IX.

That although demand was made therefor by defendant Markham, delivery of possession of any of the said residue of the estate has not been made to the Alien Property Custodian.

Conclusions of Law

I.

That this suit against the Alien Property Custodian is a suit against the United States.

II.

That this Court is without jurisdiction to hear this case, in that the United States has not consented to be made a co-defendant.

Dated at Portland, Oregon, this 22nd day of May, 1947.

/s/ CLAUDE McCOLLOCH,
Judge.

United States of America,
District of Oregon—ss:

Service of the within Findings of Fact and Conclusions of Law is hereby accepted within the State and District of Oregon, on the 5th day of March, 1947, by receiving a copy thereof duly certified to

as a true and correct copy of the original by Herman H. Hahner, Assistant United States Attorney for the District of Oregon.

/s/ FLETCHER ROCKWOOD,
Attorney for Plaintiffs.

[Endorsed]: Filed May 22, 1947. [61]

In the District Court of the United States
for the District of Oregon
Civil Action File No. 2924

KURT H. KOEHLER and WILLIAM L. BREWSTER, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and KURT H. KOEHLER in his individual capacity

Plaintiffs,

vs.

JAMES E. MARKHAM, as Alien Property Custodian, THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, and THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a national banking association,

Defendants.

JUDGMENT ORDER

This cause came on regularly for trial before the undersigned Judge on Thursday, January 23, 1947.

Plaintiffs were present in person and represented by their counsel, Fletcher Rockwood and James E. Markham, as Alien Property Custodian of the United States was represented by his counsel, Victor E. Harr and Herman H. Hahner, Assistant United States Attorneys for the District of Oregon, thereupon oral and documentary evidence was introduced and the cause was argued to the Court by the respective parties and the Court having made and entered its findings of fact and conclusions of law, Now Therefore based upon these findings of fact and conclusions of law it is,

Ordered and Adjudged that this case be dismissed for want of jurisdiction.

Dated at Portland, Oregon, this 28th day of May, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed May 28, 1947. [62]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS

Notice Is Hereby Given that Kurt H. Koehler and William L. Brewster, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and Kurt H. Koehler in his in-

dividual capacity, the plaintiffs above named, hereby appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit from the final judgment order, and the whole thereof, dismissing this action, which judgment was entered herein on the 28th day of May, 1947, by the above entitled court.

WILLIAM L. BREWSTER,
FLETCHER ROCKWOOD,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Plaintiffs. [63]

Due and legal service of the within Notice of Appeal to Circuit Court of Appeals is hereby admitted at Portland, Oregon, this 22nd day of August, 1947.

/s/ VICTOR E. HARR,
Of Attorneys for Defendant
James E. Markham, as
Alien Property
Custodian.

Due and legal service of the within Notice of Appeal to Circuit Court of Appeals is hereby admitted at Portland, Oregon, this 22nd day of August, 1947.

/s/ R. R. MORRIS,
Of Attorneys for Defendant
The Bank of California,
National Association,
a National Banking
Association

Due and legal service of the within Notice of Appeal to Circuit Court of Appeals is hereby admitted at Portland, Oregon, this 22nd day of August, 1947.

/s/ H. J. WARNER, M

Of Attorneys for Defendant

The United States National
Bank of Portland

(Oregon), a National
Banking Association.

[Endorsed]: Filed Aug. 22, 1947. [64]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Plaintiffs herein, having lately filed their notice of appeal from the judgment order of this court to the Circuit Court of Appeals of the United States for the Ninth Circuit, hereby designate the following portions of the record and proceedings in this case to be contained in the Record on Appeal:

1. Complaint.
2. Defendant James E. Markham's motion to dismiss.
3. Answer of defendant James E. Markham.
4. Answer of defendant The United States National Bank of Portland (Oregon).

5. Answer of defendant The Bank of California, National Association.

6. Defendant James E. Markham's motion for judgment on the pleadings.

7. Stipulation amending defendant James E. Markham's answer.

8. Complete record of all proceedings on trial, including the testimony and evidence.

9. Memorandum of decision.

10. Findings of fact and conclusions of law.

11. Judgment order.

12. Notice of appeal to Circuit Court of appeals.

13. Designation of contents of record on appeal.

14. Statement of points upon which appellants will rely upon appeal.

WILLIAM L. BREWSTER,
FLETCHER ROCKWOOD,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Appellants.

State of Oregon,
County of Multnomah—ss.

Service of the within Designation of Contents of Record on Appeal is hereby accepted at Portland, Oregon, this 26th day of August, 1947, by receiving

a copy thereof, duly certified to as such by Hugh L. Biggs, of attorneys for Appellants.

/s/ VICTOR E. HARR,

Asst. U. S. Atty.,

Of Attorneys for Defendant

James E. Markham.

/s/ R. R. MORRIS,

Of Attorneys for The Bank of

California, National

Association.

/s/ H. J. WARNER, M

Of Attorneys for The United

States National Bank of

Portland (Oregon).

[Endorsed]: Filed Aug. 26, 1947. [66]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANTS WILL RELY ON APPEAL

The plaintiffs, having lately filed their Notice of Appeal from the judgment of this court to the Circuit Court of Appeals for the Ninth Circuit, and having designated portions of the record herein to be contained in the Record on Appeal, do hereby file their statement of points upon which they intend to rely upon appeal:

1. The District Court erred in deciding that such court is without jurisdiction to hear this case in that the United States has not decided to be made a co-defendant.

2. The District Court erred in rendering its judgment order dismissing this case for want of jurisdiction.

WILLIAM L. BREWSTER,
FLETCHER ROCKWOOD,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Plaintiffs
and Appellants. [67]

State of Oregon,
County of Multnomah—ss.

Service of the within Statement of Points upon which Appellants Will Rely on Appeal is hereby accepted at Portland, Oregon, this 26th day of August, 1947, by receiving a copy thereof, duly certified to as such by Hugh L. Biggs, of attorneys for Appellants.

/s/ VICTOR E. HARR,
Asst. U. S. Atty.,
Of Attorneys for Defendant,
James E. Markham.

/s/ R. R. MORRIS,
Of Attorneys for defendant
The Bank of California,
National Association.

/s/ H. J. WARNER, M
Of Attorneys for defendant
The United States National
Bank of Portland
(Oregon).

[Endorsed]: Filed Aug. 26, 1947. [68]

[Title of District Court and Cause.]

DOCKET ENTRIES

1945

- Oct. 9—Filed complaint.
- Oct. 9—Issued (2) summons—to marshal.
- Oct. 11—Filed summons.
- Oct. 22—Filed summons with marshal's return.
- Oct. 29—Filed & entered order that Bank of Cal. & U. S. Natl. Bank need not plead until deft. Markham has filed answer. McC.
- Oct. 29—Filed stipulation on above order.
- Dec. 6—Filed motion of deft. for dismissal.
- Dec. 13—Filed memorandum of defts. in support of motion to dismiss complaint.

1946

- Jan. 3—Memorandum or Brief of plaintiffs to J. McColloch on motion of alien property custodian to dismiss.
- Jan. 31—Brief of U. S. Atty. submitted to Judge McColloch.
- Feb. 4—Record of argument on motion of alien property custodian to dismiss & order taking same under advisement. McC.
- Feb. 7—Entered order reserving motion of James E. Markham, Alien Property Custodian, to dismiss to time of pre-trial or trial. Attys. notified. McC.
- Feb. 7—Filed above order.
- Mar. 29—Filed Answer of Deft. Markham.
- Apr. 6—Filed Answer of Deft. U. S. Natl. Bank of Portland.

1946

- May 1—Filed answer of deft. Bank of California.
- May 20—Entered order setting for pre-trial conference on Sept. 9, 1946. Attys. notified. McC.
- May 24—Entered order striking pre-trial conference & setting for call on Sept. 16, attys. notified. McC.
- Oct. 22—Entered order setting for pre-trial on Dec. 2, and trial on Dec. 10, 1946, attys. notified. McC.
- Nov. 7—Filed motion for judgment on the pleadings.
- Nov. 12—Filed stipulation for order to amend answer.
- Nov. 12—Filed & entered order amending answer. McC.
- Nov. 12—Entered order denying motion to continue motion for judgment on pleadings to time of pre-trial. McC.
- Nov. 15—Entered order continuing indefinitely deft's. motion for judgment on pleadings. McC.
- Nov. 22—Entered order striking from pre-trial calendar, notified attys. McC.
- Nov. 26—Entered order setting for pre-trial on Dec. 13, 1946, notified attys. McC.
- Dec. 13—Pre-trial hearing had. McC.
- Dec. 14—Entered order setting for trial on Jan. 23, 1947, 10 a.m. McC. [69]

1947

- Jan. 23—Record of trial before court & order taking under advisement. McC.
- Jan. 30—Filed memorandum of decision (dismissing for want jurisdiction).
- Mar. 17—Entered order allowing ptff. 2 weeks to prepare & submit brief & order setting aside memorandum decision on Jan. 30, 1947. McC.
- Mar. 19—Filed plaintiff's memorandum on effect of joinder of defendant banks on court's jurisdiction.
- May 2—Filed answering memorandum on behalf of Deft.
- May 8—Filed Reply to answer Memo. on behalf of Deft.
- May 22—Filed & entered Findings of Fact & Conclusions of Law, notices. McC.
- May 28—Filed & entered Judgment of Dismissal, notices. McC.
- Aug. 4—Filed judgment roll.
- Aug. 22—Filed notice of appeal by plntfs.
- Aug. 22—Filed bond on appeal. [70]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered

from 1 to 71 inclusive, constitute the transcript of record upon the appeal from a judgment of said Court in a cause therein numbered Civil 2924, in which Kurt H. Koehler and William L. Brewster, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and Kurt H. Koehler in his individual capacity are plaintiffs and appellants and James E. Markham, as Alien Property Custodian, The Bank of California, National Association, a national banking association, and The United States National Bank of Portland (Oregon), a national banking association, are defendants and appellees; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellants and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation, as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed a duplicate transcript of proceedings dated Jan. 23, 1947.

I further certify that the cost of comparing and certifying the within transcript is \$16.35 and that the same has been paid by appellants.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 26th day of September, 1947.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy. [71]

In the District Court of the United States
for the District of Oregon

Civil No. 2924

KURT H. KOEHLER and WILLIAM L. BREWSTER, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and KURT H. KOEHLER in his individual capacity,

Plaintiffs,

vs.

JAMES E. MARKHAM, as Alien Property Custodian, THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, and THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a national banking association,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Before: Honorable Claude McColloch,
Judge.

Portland, Oregon, January 23, 1947

Appearances:

Mr. Fletcher Rockwood (Hart, Spencer, McCulloch & Rockwood), of Attorneys for Plaintiffs.

Mr. Victor E. Harr, Assistant United States Attorney, and Mr. Herman H. Hahner, Assistant United States Attorney, Attorneys for Defendant James E. Markham, as Alien Property Custodian.

Mr. John G. Gearin (Hampson, Koerner, Young & Swett), of Attorneys for The Bank of California, National Association.

Mr. H. J. Warner (Platt, Henderson, Warner, Cram & Dickinson), of Attorneys for Defendant The United States National Bank of Portland (Oregon).

Proceedings of Trial

The Court: Mr. Rockwood, are you ready to be heard?

Mr. Rockwood: The case was set for trial this morning, your Honor. Mr. Harr called me a few days ago and suggested that we stipulate the facts rather than call witnesses and, in general, I am agreeable to do that. I have had no time to prepare a stipulation myself. Mr. Harr showed me this morning a proposed stipulation. I have not had an opportunity to read it through.

As a matter of fact, under the pleadings, so far as the Government's answer is concerned, there are only two facts alleged in the complaint which are not admitted. One is the citizenship of the plaintiffs and I am prepared to prove that. It will take about five minutes to do that.

They have denied, for want of information and belief, the provisions of Paragraph XII of the complaint relating to the question of the trustees. I think that matter can be disposed of quickly. [2*]

The Government denies the allegations of Paragraph XVII of the complaint except the allegation that the plaintiff, Kurt H. Koehler, is the son of the decedent, Bertha Koehler. The remaining allegations are substantially allegations of the Oregon law to the effect that, if certain things happen, Kurt H. Koehler, as an heir at law, would have certain rights. The Oregon law is within the judicial knowledge of the Court, so I do not have evidence to present to support that allegation.

In the first place, I should say that the defendant, The Bank of California, and the defendant, The United States National Bank, deny certain of the allegations of the complaint for want of information sufficient to form a belief, but I have assurance, in letters from counsel for these two defendants, that they will withdraw their denials and that, at the trial, would admit the allegations of the complaint. I take it that still stands, Mr. Warner and Mr. Gearin?

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

Mr. Gearin: I would like to confer with you a moment on that. I was called into this case suddenly. I have not talked to Mr. Morris about it. I just want to clear up a few matters for my own particular satisfaction.

Mr. Rockwood: I have a letter from Mr. Morris stating that he will be prepared to admit at the trial the allegations of certain enumerated paragraphs of the complaint. I think that clears it so that we can try this case and make the [3] record, and for that purpose I would like to call, first, Mr. Koehler.

KUHT H. KOEHLER

one of the plaintiffs produced as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rockwood:

Mr. Rockwood: I will want to offer in evidence, with counsel's consent, a photostatic copy of the birth certificate of this witness as an exhibit, with permission to retain the original certificate, the original certified copy, in my files.

Mr. Harr: Yes.

Mr. Rockwood: I offer in evidence, as Plaintiffs' Exhibit No. 1, photostatic copy of the birth certificate of Kurt Koehler, certified by the proper officials of the State of Oregon.

The Court: Admitted.

(Testimony of Kurt H. Koehler.)

(Photostatic copy of birth record, Kurt Koehler, thereupon received in evidence and marked Plaintiffs' Exhibit No. 1.)

Q. (By Mr. Rockwood): Mr. Koehler, your full name is what?

A. Kurt Herman Koehler.

Q. You are one of the plaintiffs in this case against the [4] Alien Property Custodian?

A. Yes.

Q. You are a son of Bertha Koehler, deceased?

A. Yes.

Q. Have you at any time in your life resided in any state of the United States other than the State of Oregon? A. No.

Q. Have you at any time in your life resided in any other place in the world other than the state of Oregon?

A. Well, I have been in other places than the State of Oregon on trips, but not residence.

Q. But you have never established a residence other than in the State of Oregon, the City of Portland, State of Oregon? A. No.

Mr. Rockwood: That is all.

Mr. Harr: No questions.

(Witness excused.) [5]

WILLIAM L. BREWSTER

one of the plaintiffs herein, produced as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

Mr. Rockwood: I hand to Mr. Harr, for his examination, a certified copy of the Return of Births, being the Return of Birth of William Lewis Brewster, certified by the proper officials of the Department of Health, Philadelphia, Pennsylvania, and also a photostatic copy of the original and, with his consent, I offer in evidence, as Plaintiffs' Exhibit No. 2, the photosatic copy of the certificate.

The Court: Admitted.

Mr. Rockwood: This certificate shows William Lewis Brewster was born on August 2, 1866.

(Photostatic copy of Return of Birth in re William Lewis Brewster thereupon received in evidence and marked Plaintiffs' Exhibit No. 2.)

Direct Examination

By Mr. Rockwood:

Q. You are one of the plaintiffs in this case?

A. Yes.

Q. A member of the Bar of the State of Oregon?

A. Yes.

Q. You have practiced for many years at the Bar in Oregon? A. Yes. [6]

Q. Prior to practicing in Oregon, did you practice law in any other state or jurisdiction?

A. Well, I was admitted in New York and nominally entitled to practice there for five days, and then I came West.

(Testimony of William L. Brewster.)

Q. To Oregon? A. Yes.

Q. Will you please tell us what places in the United States you have resided in since your birth, what states?

A. Pennsylvania, Massachusetts, while I was in college, New York, New Jersey—I think that is the list.

Q. And Oregon? A. And Oregon.

Q. How long have you been a resident of the State of Oregon? A. Since 1891.

Q. Have you at any time in your life had a domicile or residence in any other place in the world outside of the United States of America?

A. No.

Q. You are familiar with the administration of the trust under the will of Bertha Koehler?

A. Yes.

Q. Which is in issue in this case?

A. Yes.

Q. As between you and Mr. Koehler, your co-trustee, who has been particularly responsible for the keeping of the accounts [7] of the trustees?

A. I have.

Q. You, of course, have read the complaint in this case, Mr. Brewster? A. Yes.

Q. You are familiar with Exhibit I, attached to the complaint, which purports to be a statement of the transactions of the trustees in the administration of this trust from the time of the distribution of the assets of the estate to the trustees to the time of the filing of the complaint in this case?

A. From August 1, 1944, to September 10, 1945.

(Testimony of William L. Brewster.)

Q. In that Exhibit I, attached to the complaint, a true statement of the account of the trustees between those two periods, those two dates?

A. It is.

Q. Between those two dates? A. It is.

Mr. Rockwood: You may cross-examine.

Cross-Examination

By Mr. Harr:

Q. As executor, one of the executors of this estate, you prepared and filed the final account, did you not, with the Probate Court in Multnomah County? A. Yes.

Q. In Multnomah County? [8] A. Yes.

Q. On the 18th day of July, 1944? A. Yes.

Q. You at that time petitioned the Court for distribution of the assets of this estate?

A. Yes.

Q. You petitioned the Court that they be transferred to you and Mr. Kurt Koehler as trustees?

A. Yes.

Q. The purpose of that trust, generally, was to keep that property, the half that was transferred to you—half was transferred, was it not?

A. Yes.

Q. The purpose of that was to keep that half for the benefit of a foreign national, to-wit Ilse Schloesser?

Mr. Rockwood: Objected to as calling for a conclusion of law. That calls for an interpretation of the will and the will, your Honor, will speak for itself.

(Question read.)

(Testimony of William L. Brewster.)

Q. (By Mr. Harr): Is that right?

A. Well, again, I am jumping at a legal conclusion. It was for the persons entitled to receive the trust fund by the terms of the will, and we interpreted that one way and you gentlemen interpreted it another.

Q. (By Mr. Harr): The will provided you should take that half—— [9] A. Yes.

Q. ——for the benefit of Ilse Schloesser? That is what the will provided, did it not?

Mr. Rockwood: I object to that, your Honor, as not the best evidence. The will speaks for itself. The provisions of the will have been admitted in the pleadings.

The Court: Sustained.

Q. (By Mr. Harr): You took that half, that 50 per cent, pursuant to the terms of the will?

A. Yes.

Q. And, pursuant to your petition, the Court did order distribution, did it not? A. It did.

Q. To you? A. Yes.

Q. For that purpose? A. Yes.

Q. I will ask you whether or not, before the distribution, you notified the Alien Property Custodian that you were asking for distribution?

A. No, we did not.

Q. Did the Alien Property Custodian consent in writing to the payment of this transfer and distribution?

A. The Alien Property Custodian paid no attention to such [10] request——

(Testimony of William L. Brewster.)

Q. I think you can answer that Yes or No. Did he give consent in writing to this transfer?

A. No.

Q. To this distribution? A. No.

Mr. Harr: At this time, if your Honor please, I wish to call the Court's attention to 8 Federal Register 1780. I would like to take this opportunity to read a portion of it to the Court.

The Court: Just tell me about it.

Mr. Harr: General Order 20——

The Court: Just state your point.

Mr. Harr: General Order 20 recites that no designated person shall take, transfer or distribute, or cause to be taken or transferred or distributed any property of any nature whatsoever to or for the benefit of any designated enemy country or designated national, unless there is, first, a written consent thereto—there is no alternative.

The Court: Where did you get that Federal Register? Do you keep one in your office?

Mr. Harr: We borrowed this out of your Honor's library this morning.

The Court: The answer is: It is not in your office.

Mr. Harr: We do have one down there, but we could not [11] find it. We are supposed to have them in a permanent volume and that particular volume has been absent, so we borrowed this one from the Court's library.

The Court: It is not reliable. I want you to know that I suppose what you found in there is

(Testimony of William L. Brewster.)

reliable, but I have never been able to keep one that is reliable. I was wondering.

Redirect Examination

By Mr. Rockwood:

Q. After the so-called distribution by yourselves as executors to yourselves as trustees, was the property at that time, or very shortly thereafter, insofar as it involved intangible property, placed in a blocked account with The Bank of California?

A. I didn't get that question.

Q. Shortly after the distribution by yourself as executors to yourselves as trustees, was the intangible personal property, exclusive of The United States National Bank stock, deposited in a blocked account with The Bank of California?

A. Yes, it was.

Q. Have you, since that time, ever had any access to that intangible personal property? Have you at any time had access to it? A. No.

Q. It has remained in the blocked account?

A. Except in a very limited way, when we were allowed to pay taxes out of the bank account, something of that kind. [12]

Q. With the consent of the Treasurer?

A. Yes.

Q. Except for that, there have been no transactions by you as trustees involving withdrawals or disposition of the property in the blocked account?

A. No.

Mr. Rockwood: I have no further questions.

(Testimony of William L. Brewster.)

Recross-Examination

By Mr. Harr:

Q. I have a question or two further. The Custodian, in correspondence with you, as late as the 28th of September, 1945, inquired about compliance with the vesting order, is that right?

A. I don't remember the date.

Q. Put it this way——

A. I assume you are right.

Q. Put it this way: The Custodian did not know, up until the time your complaint was filed in this case, that you would not comply, is that correct?

A. Well, must have been the complaint—I couldn't say.

Q. You filed the complaint on or about the 9th of October? A. Yes.

Q. 1945? A. Yes.

Q. You have a letter in your file, have you not, dated [13] September 28, 1945—perhaps a week or ten days before that—with reference to this matter, inquiring when compliance with the vesting order might be expected?

A. My mind is not fresh on the correspondence. I can't tell you that offhand.

Mr. Rockwood: You do not have your files with you? A. No, sir.

Q. (By Mr. Harr): But you do know you had correspondence with him up to the very time the complaint was filed? A. Yes.

(Testimony of William L. Brewster.)

Q. Has any of the property been transferred to the Alien Property Custodian? A. No.

Q. Physical possession has never been transferred to him? A. No.

Q. In connection with any of the property?

A. No.

Mr. Harr: That is all.

Mr. Rockwood: That is all, Mr. Brewster. Thank you.

(Witness excused.)

Mr. Rockwood: Mr. Warner, do you want to make any remarks concerning the pleadings?

Mr. Warner: I think it is appropriate at this time, your Honor, to confirm, for the purpose of the record, that which [14] Mr. Rockwood has already told you, that we have made certain admissions, and I will now formally state, in behalf of the defendant, The United States National Bank, that, notwithstanding the allegations of our answer, we now admit Paragraphs VII, VIII, X, XI, XII, XIII, XIV, XV and XVI of plaintiffs' complaint. That covers it, does it not, Mr. Rockwood?

Mr. Rockwood: That is right.

Mr. Warner: If it is also in order to so state, the defendant, The United States National Bank, has no evidence to offer.

Mr. Rockwood: Do you want to speak?

Mr. Gearin: For the sake of the record, The Bank of California, National Association, will admit Paragraphs VI, VIII, IX, X, XI and XVI

of the complaint, notwithstanding our answer which is on file. This is in accordance with Mr. Morris' letter to Mr. Rockwood under date of August 31, 1946.

Mr. Rockwood: The plaintiffs rest.

(Plaintiffs rest.)

Mr. Harr: The vesting orders having been pleaded by the plaintiffs and admitted by the defendants, the United States of America has, therefore, no evidence to be considered by the Court. The defendant, United States of America, has no testimony to introduce at this time.

(Testimony closed.) [15]

Mr. Rockwood: I know of nothing further, your Honor, which needs to be done except one thing. The matter has been argued substantially on the merits in connection with the motion of the Government to dismiss and the motion for judgment on the pleadings.

I did have a message from the Clerk—and I assume that other counsel have had a similar message—that you would like to have our comments on the case of the United States v. Sherwood, 312 U. S. 584.

In that case, there was a suit by a judgment creditor, by one who had a claim against the United States. The judgment creditor sued the United States directly under authority granted by a court in New York, under the New York statute allowing a judgment creditor to sue. The suit was brought under the Tucker Act.

The question substantially in that case was whether one who had no claim against the United States himself could sue in the District Court under the Tucker Act—could bring suit against the United States for a money judgment. Incidentally, the claim against the United States was some \$15,000 and the plaintiff in the cited case sued only for \$10,000, being the limit of the jurisdiction of the District Court under the Tucker Act.

I was somewhat at a loss to determine how that case was apropos here, but I assume the point your Honor had in [16] mind was this: Can these plaintiffs bring a suit against the United States under Section 9 of the Trading with the Enemy Act and, at the same time, join additional defendants—in this case, The Bank of California and The United States National Bank, to have adjudicated the rights of all three parties.

The Court: We have the same thing arising in suits that sailors are filing, or seamen in the Maritime Service. They have two choices, and one is to sue the Government in Admiralty. It was the custom for a while to join the agent who operated the ship. We all know the Maritime Commission ships were operated by men experienced in that business, under agency contracts with the Maritime Commission. That is what is raised here, whether the United States could be made a co-defendant.

Mr. Rockwood: Yes. In the Sherwood case the point was first made by the courts that the United States cannot be sued as a sovereign without its consent, and, of course, I would recognize that as a

basic principle and as the matter which we must meet. We say that the necessary consent of the United States to be sued is found in Section 9 (a) of the Trading with the Enemy Act.

The Court: In one of these briefs that came from Washington is the statement, as you may remember, that no place did the Government consent to be sued in injunction proceedings or for injunctive relief.

Mr. Rockwood: That is a point I want to make. The [17] jurisdiction of the Court of Claims and the jurisdiction of the District Court under the Tucker Act, as pointed out by the Court, is simply to render money judgments. The Court has no jurisdiction to do anything else and the Court in general reasoned that, if that be true, the Court does not have to adjudicate the rights of anyone—cannot adjudicate the rights of anyone in the Court of Claims other than a claim against the United States for money judgment.

The language of the Trading with the Enemy Act is positively and decidedly different. In Section 9 (a) it says: “* * * said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the District Court of the United States for the District in which such claimant resides * * * to establish the interest, right, title, or debt so claimed.”

It specifically permits a suit in equity which I assume means a suit which has all the attributes of a suit in equity. It is not an action at law against the Government which is authorized by this Section

9. It is a suit in equity against the United States and, if it does not specifically state that the attributes of equitable jurisdiction shall apply, it does not satisfy the requirement. It does not specifically state necessary or proper parties may be brought in as in any suit in equity, but the very use of the language "suit in equity" brings into the Act all of the attributes of [18] equitable jurisdiction at the time of the passage of this section of the Act, and one of the attributes of equitable jurisdiction is injunctive relief, of course, and one of the attributes of equitable jurisdiction is that all controversies between several parties may be resolved in a single suit in which several parties are made defendants. I believe that the use, in the Trading with the Enemy Act, of the language "suit in equity" is sufficient to distinguish the case from all points which might otherwise be raised under the Sherwood case.

I might say this, that if we are wrong on that point the Court might properly—I say if we are wrong; I don't think we are—the Court might properly dismiss the suit as to The Bank of California and The United States National Bank, but we would still be entitled to all the relief we ask for against the Alien Property Custodian, and, if that should occur, and we got our decree against the Custodian but no decree against the other defendants to protect them if they want to turn the property over to us, we would simply have to bring another suit or possibly two suits, one against The United States National Bank to compel the transfer of the stock,

and one against The Bank of California to compel the turning over of the assets to the trustees to be administered under the supervision of the Court, as we ask in our prayer, so that it is not a basic question in the [19] lawsuit whether we are entitled to relief against them in this suit or not. However, I do believe that under the Act, which gives the Court jurisdiction to entertain a suit in equity against the United States, we are proceeding properly, that we have proceeded properly in enjoining these defendants in this first suit.

Mr. Harr: In the case of the United States vs. Sherwood, there seems to be an analogy, particularly I thing on Page 591: "That matter is not one of procedure but of jurisdiction whose limits are marked by the Government's consent to be sued. That consent may be conditioned, as we think it has been here, on the restriction of the issues to be adjudicated in the suit, to those between the claimant and the Government."

Of course, this suit has been labeled a suit under Section 9, whereas the Government does not agree with that at all, as was fully and completely argued here before your Honor, so we take the position that it is not at all a case under Section 9 of the Trading with the Enemy Act.

The case not being one where the Government has consented to be sued—Section 9 also carries with it its own injunctive right—I was searching for that portion of the brief, your Honor. I don't find it.

The Court: It is just a short statement. It is to the effect that the Government is not consenting to

be sued injunctively. There are several citations, however. [20]

Mr. Harr: There is a part of it that refers to Section 9 carrying with it its own injunctive rights against the Custodian. I am not prepared on that point. The brief does cover that point, though, and sets forth in what respect the section does enjoin the Custodian.

Mr. Rockwood: It is that one sentence that provides what shall happen during the pendency of the litigation. Isn't that it?

Mr. Harr: I think that is correct.

Mr. Rockwood: That simply describes what shall occur while the litigation is pending. It does not restrict the power of the Court to grant final relief.

The Court: Page 7 of the brief which was filed December 13th, the Government's brief. I don't know if it was in the earlier or later Government's brief—there were three Government briefs.

Mr. Harr: I think the point that Mr. Jaffe had in mind in writing this brief was that there is a condition precedent to any action brought by a claimant, in law or in equity, that there must be an actual physical delivery and, as stated, in the Sherwood case, the Rules of Civil Procedure give the litigants no right whatsoever to enlarge upon or diminish the jurisdiction of the Court: The section itself sets out the limits.

The Court: Page 9 of one of the Government's briefs—whether it was the last one or not I don't know—contains a [21] sentence which caught my

eye. It begins on Line 21: "It need hardly be pointed out that the United States has not consented anywhere by any law to be sued for injunctive relief against the Alien Property Custodian. Section 9 (a) of the Trading with the Enemy Act imposes upon the Custodian its own injunctive restraint as to property in his actual physical possession and concerning only which suits are authorized."

I don't know how to decide this case; may never know how to decide it, but I will decide it very soon. There is nothing more to be submitted?

Mr. Harr: No, your Honor.

Mr. Rockwood: No, your Honor. [22]

[Title of District Court and Cause.]

CERTIFICATE

I, Ira G. Holcolmb, Court Reporter of the above-entitled Court, do hereby certify that on, to-wit, January 23, 1947, I reported in shorthand certain testimony and proceedings had in the above-entitled cause and court; that I thereafter caused my said shorthand notes to be reduced to typewriting and that the foregoing, consisting of pages numbered 1 to 22, both inclusive, constitutes a true, full and accurate transcript of said shorthand notes, so taken by me as aforesaid.

Dated at Portland, Oregon, this 10th day of September, 1947.

/s/ IRA G. HOLCOMB,
Court Reporter.

[Endorsed]: No. 11746. United States Circuit Court of Appeals for the Ninth Circuit. Kurt H. Koehler and William L. Brewster, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and Kurt H. Koehler in his individual capacity, Appellants, vs. James E. Markham, as Alien Property Custodian, The Bank of California, National Association, a national banking association, and The United States National Bank of Portland (Oregon), a national banking association, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed September 30, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

KURT H. KOEHLER and WILLIAM L. BREWSTER,, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustee under the last will and testament and codicil thereto of Bertha Koehler, deceased, and KURT H. KOEHLER in his individual capacity,

Appellants,

vs.

JAMES E. MARKHAM, as Alien Property Custodian, THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, and THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a national banking association,

Appellees.

STATEMENT OF POINTS UPON WHICH
APPELLANTS WILL RELY ON APPEAL

To the Clerk of the Above Entitled Court:

The Record on Appeal having been transmitted by the Clerk of the District Court to the Clerk of the United States Circuit Court of Appeals for docketing, the appellants submit herewith the statement of points upon which they intend to rely upon appeal:

1. The District Court erred in deciding that such court is without jurisdiction to hear this case in that the United States has not consented to be made a co-defendant.
2. The District Court erred in rendering its judgment order dismissing this case for want of jurisdiction.

/s/ WILLIAM L. BREWSTER,

/s/ FLETCHER ROCKWOOD,

HART, SPENCER, McCULLOCH
& ROCKWOOD,

Attorneys for Appellants.

Due and legal service of the within Statement of Points Upon Which Appellants Will Rely on Appeal is hereby admitted at Portland, Oregon, this 7th day of October, 1947.

/s/ VICTOR E. HARR,

Of Attorneys for Appellee James E. Markham, as
Alien Property Custodian.

/s/ R. R. MORRIS,

Of Attorneys for Appellee The Bank of California
National Association, a National Banking As-
sociation.

PLATT, HENDERSON, WARNER,
CRAM & DICKINSON,

By /s/ J. M.,

Of Attorneys for Appellee The United States Na-
tional Bank of Portland (Oregon), a National
Banking Association.

[Endorsed]: Filed Oct. 9, 1947.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL TO BE PRINTED

To the Clerk of the Above Entitled Court:

The Record on Appeal having been transmitted by the Clerk of the District Court to the Clerk of the United States Circuit Court of Appeals for docketing, the appellants hereby designate the entire transcript to be printed for inclusion in the printed transcript of record herein.

/s/ WILLIAM L. BREWSTER,
/s/ FLETCHER ROCKWOOD,
HART, SPENCER, McCULLOCH
& ROCKWOOD,
Attorneys for Appellants.

Due and legal services of the within Designation of Contents of Record on Appeal to Be Printed is hereby admitted at Portland, Oregon, this 7th day of October, 1947.

/s/ VICTOR E. HARR,

Of Attorneys for Appellee James E. Markham, as
Alien Property Custodian.

/s/ R. R. MORRIS,

Of Attorneys for Appellee The Bank of California
National Association, a National Banking As-
sociation.

PLATT, HENDERSON, WARNER,
CRAM & DICKINSON,

By /s/ J. M.,

Of Attorneys for Appellee The United States Na-
tional Bank of Portland (Oregon), a National
Banking Association.

[Endorsed]: Filed Oct. 9, 1947.

